Supreme Court, U. S.
FILED
JUN 10 1980
MICHAEL RODAK, JR., CLERK

JOINT APPENDIX

In the Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1068

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
Petitioner

—v.—

ASSOCIATED DRY GOODS CORPORATION

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI FILED JANUARY 7, 1980
CERTIORARI GRANTED MARCH 17, 1980

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RELEVANT DOCKET ENTRIES

06-27-75 (1) Complaint filed; summonses issued.

07-08-75 (2) Marshals return on summons as to all defendants listed executed and filed.

08-26-75 (3) Deft's Motion to Dismiss with Supporting Memorandum filed.

09-02-75 (4) ORDERED that Pltf. may have up to & including 09/29/75 in which to file response to Deft's Motion to Dismiss, ENTERED by RRM on 09/02/75 & filed. Copies mailed.

09-25-75 (5) ORDER that Pltf may have up to & including 10/31/75 within which to file its response to Deft's Motion to Dismiss, ent. 9/25/75, RRM, filed. Copies mailed.

10-10-75 (6) ORDERED that Deft. may file Answer within 10 days after Court finally rules on Deft's Motion to Dismiss, ENTERED on 10/10/75 & filed. Copies mailed.

10-31-75 (7) Pltf's Memorandum in Opposition to Motion to Dismiss Complaint, filed.

12-01-75 (8) Memorandum of Points and Authorities in Reply to Pltf's Memorandum in Opposition to Deft's Motion to Dismiss, filed.

06-25-76 (9) Court's Memorandum and ORDER denying deft's motion to dismiss in part and sustaining Deft's motion to dismiss in part, ent. 6-25-76, RRMjr, filed. Copies mailed.

07-08-76 (10) ORDERED parties to action brief within 15 days from entry of this Order issue of whether Civil Rights Act of 1964, ENTERED by RRMjr on 07/08/76 & filed. Copies mailed to all counsel of record.

07-14-76 (11) ORDER that the parties may have until 8/8/76 in which to file their briefs, ent. 7/14/76, RRM, filed. Copies mailed.

07-28-76 (12) Pltf's Memorandum in Support of Motion to Join Parties Deft and Amend Complaint, filed.

07-28-76 (13) Pltf's Motion to Join Parties and Amend Complaint, filed.

08-09-76 (14) Deft's Memorandum of Points and Authorities in Support of Deft's Position on the Merits, filed.

08-09-76 (15) Pltf's Supplemental Memorandum Following Decision on Motion to Dismiss, filed.

08-24-76 (16) ORDERED Motion to join parties Deft & amend complaint filed by Pltf on 07/28/76 is hereby GRANTED; Defts directed to respond to amended complaint within 20 days from entry of this Order, ENTERED by RRMjr on 08/24/76 & filed. Copies mailed to all counsel of record.

08-25-76 (17) Pltf's Amended Complaint for declaratory judgment & injunction, filed.

08-26-76 (18) Summons issued on Amended Complaint.

08-27-76 (19) ORDER allowing Defts 20 days from service to respond to amended complaint ent. 8-27-76, RRM, JR., filed. Copies mailed.

09-20-76 (20) Defts' Motion for Extension of Time, filed.

09-20-76 (21) ORDERED Defts have until 09/23/76 in which to respond to amended complaint, ENTERED by RRMjr on 09/20/76 & filed. Copies mailed to all counsel of record.

09-23-76 (22) Defts' Answer, filed. No jury demand.

11-16-76 (23) Pltf's Motion for Relief from Order, filed.

11-16-76 (24) Pltf's Memorandum in Support of Motion for Relief from Order, filed.

11-22-76 (25) Defts' Memorandum in Support of Defts' Position on Merits, filed.

11-23-76 (26) ORDERED Defts may respond within 10 days to Pltf's motion for relief, ENTERED by RRMjr on 11/23/76 & filed. Copies mailed to all counsel of record.

12-07-76 (27) ORDER allowing Pltf until 1-22-77 to file response to Dft's memorandum ent. 12-7-76, RRM,JR., filed. Copies mailed.

12-14-76 (28) Pltf's Interrogatories to Defendants, filed.

01-05-77 (29) ORDER that time for Pltf's response to Defts' Memorandum in Support of Defts' Position on Merits extended to 1-31-77, ent. 1-6-77, RRMjr, filed. Copies mailed.

02-01-77 (30) ORDERED time for Defts to answer interrogatories extended to 01/31/77 & time for Pltf. to file memorandum on merits extended to 02/14/77, nunc pro tunc 01/31/77, ENTERED by RRMjr on 02/01/77 & filed. Copies mailed to all counsel of record.

02-04-77 (31) Deft's Answers to Pltf's Interrogatories, filed.

03-01-77 (32) ORDER, consolidating CA-76-0510 with this case. Entered by RRM, jr., on 03/01/77 & filed. Copies mailed to all counsel of record.

04-01-77 (33) EEOC's Supplemental Response in Support of Deft's Position on the Merits, filed.

02-11-78 (34) Pltfs' reply memorandum, received (no certificate).

07-18-78 (35) Memorandum of the Court filed.

07-18-78 (36) ORDER granting in CA 76-0510-R, EEOC's application for enforcement of adm. subpoena duces tecum; judgment on merits in CA 75-0297-R hereby entered in favor of the Pltf, Assoc. Dry Goods Corp; voiding EEOC procedural regulations of charging parties any information in EEOC investigative files; enjoining Commission from making such disclosures; denying request of Pltf, Assoc. Dry Goods, for atty's fees & costs in defending against EEOC's action to enforce subpoena duces tecum ent. 7-18-78, RRM,JR., filed. Copies mailed.

08-01-78 (37) Joseph Horne Co.'s Notice of Appeal in CA 76-0510-R, filed.

08-01-78 (38) Joseph Horne Co.'s Motion for Stay of Order Pending Appeal and for Interim Relief, filed.

08-04-78 (39) ORDER that Respondent-Appellant's application for stay pending appeal GRANTED, ent. 8-3-78, RRMjr., filed. Copies mailed.

08-10-78 (40) Defts' Notice of Appeal, filed. (No fees received).

08-10-78 (41) Defts' Motion for Stay Pending Appeal, filed.

08-10-78 (42) Defts' Memorandum in Support of Motion for Stay, filed.

08-14-78 (43) Pltf-Appellee's Answer to Defts-Appellants' Motion For Stay Pending Appeal, filed.

08-16-78 (44) ORDER, that Defts-Appellants' motion for stay pending appeal of Order of Court dated 07/18/78 is GRANTED, but only to the extent it pertains to proceedings and records involving parties other than Associated Dry Goods Corp. or its divisions, including the Joseph Horne Co. Entered by RRM,JR., on 08/16/78 & filed. Copies mailed.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

Civil Action No. 75-0297-R

ASSOCIATED DRY GOODS CORPORATION, PLAINTIFF

—*v.*—

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC), and ETHEL B. WALSH, individually and as "Acting Chairman," and permanent Vice Chairman of the EEOC, DANIEL E. LEACH, individually and as Member of the EEOC, COLSTON A. LEWIS, individually and as Member of the EEOC, RAYMOND L. TELLES, individually and as Member of the EEOC, ALVIN L. GOLUB, individually and as Acting Executive Director of the EEOC, ABNER W. SIBAL, individually and as General Counsel of the EEOC, EDUARDO PENA, Jr., individually and as Director of Compliance of the EEOC, and EUGENE V. NELSON, individually and as District Director, Pittsburgh, Pennsylvania, District Office, of the EEOC, DEFENDANTS

AMENDED COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTION

Associated Dry Goods Corporation, by its attorneys, for its complaint against the Defendants allege, as follows:

AS AND FOR A FIRST SEPARATE AND DISTINCT CAUSE OF ACTION

NATURE OF THE ACTION

1. This is a civil action seeking declaratory, injunctive and other relief. Plaintiff seeks a judgment declaring that confidential business records of the Plaintiff, subpoenaed by Defendants during their administrative investigations,

should not be disclosed to the charging parties, their attorneys or any other person. In addition, Plaintiff seeks an injunction against such disclosure.

BASES OF JURISDICTION

2. Jurisdiction of this Court is founded upon the Freedom of Information Act (F.O.I.A.), as amended, 5 U.S.C. § 552 (1974); the Administrative Procedure Act, 5 U.S.C. §§ 551, *et seq.*, 701, *et seq.*; Title 28 U.S.C. §§ 1331, 1337, 1651; the Declaratory Judgment Act, as amended, 28 U.S.C. §§ 2201-2203; Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e, *et seq.* (1972); and, the Trade Secrets Act, 18 U.S.C. § 1905.

3. The matters in controversy exceed the sum of $10,000.00, exclusive of interest and costs, and arise under the laws of the United States.

THE PARTIES

4. Plaintiff, Associated Dry Goods Corporation, (ADG) is a Virginia corporation incorporated in the City of Richmond. It owns and operates numerous retail department stores throughout the United States.

5. The Joseph Horne Company (hereinafter referred to as "Horne's") is a division of ADG authorized to do business in the Commonwealth of Pennsylvania, where it operates several retail department stores in the metropolitan Pittsburgh vicinity.

6. Defendant Equal Employment Opportunity Commission (hereinafter referred to as the "E.E.O.C.") is an administrative agency of the Federal Government, created under the authority of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e, *et seq.*

(a) Defendant E.E.O.C. is an "agency" within the meaning of § 551(1) of the Administrative Procedure Act, 5 U.S.C. § 551(1), and § 552(e) of the F.O.I.A., as amended, 5 U.S.C. § 552(e) (1974).

(b) Defendant E.E.O.C. has its principal offices and place of business in the City of Washington, District of Columbia.

6-1. (a) The individual defendants include the "Acting Chairman" and permanent Vice Chairman, and Commissioners of the E.E.O.C., and named officers, agents or employees of the E.E.O.C., as follows:

(1) ETHEL B. WALSH is "Acting Chairman" and permanent Vice Chairman of the E.E.O.C.;

(2) DANIEL E. LEACH, COLSTON A. LEWIS, and RAYMOND L. TELLES are Members of the E.E.O.C.;

(3) ALVIN L. GOLUB, is Acting Executive Director of the E.E.O.C.;

(4) ABNER W. SIBAL is General Counsel of the E.E.O.C.;

(5) EDUARDO PENA, JR., is Director of Compliance of the E.E.O.C.;

(6) EUGENE V. NELSON is District Director for the Pittsburgh, Pennsylvania, District Office of the E.E.O.C.

(b) Upon information and belief, all of the individual Defendants named in subparagraph (a) of this paragraph maintain their offices at the E.E.O.C's principal offices located in the City of Washington, District of Columbia, except for Defendant Eugene V. Nelson, whose offices are located at 1000 Liberty Avenue, Pittsburgh, Pennsylvania.

(c) The Defendant E.E.O.C. and the said individual Defendants are hereinafter referred to as "Defendants".

(d) The Defendants and each of them are authorized to exercise only such powers as are conferred upon them by Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e, *et seq.*, and lawful regulations issued pursuant to § 713 of said statute, 42 U.S.C. § 2000e-12(a), and then only in the manner prescribed therein.

FACTUAL ALLEGATIONS

7. Upon information and belief, the following individuals who were employed at Plaintiff's Horne's di-

vision at all material times, filed charges with the Defendant E.E.O.C.:

Charging Party	Date Charge Filed	Basis For Charge
1. Katherine Murray	November 16, 1971	Race Discrimination
2. Helen Pollock	January 3, 1972	Sex Discrimination
3. Mary Kritko	January 17, 1972	Sex Discrimination
4. Lois Blake	February 15, 1972	Sex Discrimination
5. Marlene Denk	February 28, 1972	Sex Discrimination
6. Marsue Dingley	June 6, 1973	Sex Discrimination
7. Alice M. Corvino	April 28, 1973	Sex Discrimination

8. In or about February, 1974, the Defendants conducted an administrative investigation into the basis of the charges cited in Paragraph 7 above.

9. On February 25, 1974, the District Director for the Pittsburgh Office of the Defendants requested, by letter, that Horne's provide Defendants with certain business records, documents and detailed answers to interrogatories pertaining to the operations of the Plaintiff's Horne's division. Copies of two of the above charges, not previously served upon Horne's, were enclosed with the letter and interrogatories. This letter, and the interrogatories are annexed hereto and made a part hereof as EXHIBITS A and B, respectively.

10. Upon information and belief, on February 25, 1974, Defendants' District Director mailed a copy of its February 25th letter described above, together with the aforesaid interrogatories and charges, to an attorney who practices law in the City of Pittsburgh, Commonwealth of Pennsylvania.

11. Upon information and belief, the aforesaid attorney represents only one of the charging parties herein. He also represents other persons and associations in the Pittsburgh area, including labor unions. These unions negotiate contracts with Horne's and other employers, of which some of the latter are competitors of Horne's.

12. In March, 1974, the Plaintiff, in response to Defendants' request for cooperation in the investigation of the above-mentioned charges, offered to provide Defendants with witnesses who had first-hand knowledge of the

facts. However, Defendants refused to interview these witnesses until the material described in Paragraph 9 above was supplied.

13. By letter dated April 10, 1974, the Defendants' District Director again requested Plaintiff to provide information and records substantially similar to what was requested in Paragraph 9 above. A copy of this request is annexed hereto and made a part hereof as EXHIBIT C.

14. By letter dated April 18, 1974, Plaintiff's attorney requested Defendants to give written assurances that the information and records sought by the Defendants would not be disclosed to the charging parties, their attorneys or other persons. In addition, Plaintiff's attorney sought to elicit from Defendants information as to specific safeguards which would be provided to prevent the charging parties, their counsel or witnesses, who might be given access to records and information concerning Plaintiff's business, from disclosing this information to others. A copy of this letter is annexed hereto and made a part hereof as EXHIBIT D.

15. By letter dated May 3, 1974, the Defendants advised Plaintiff that they could not make any assurances of non-disclosure, that charging parties and their counsel would be permitted access to the Defendants' investigative files, containing the records, documents, answers to interrogatories supplied by the Plaintiff, and other information obtained during the investigation, and that the Defendants had no way of preventing the disclosure of this information from being transmitted by charging parties to others. A copy of this letter is annexed hereto and made a part hereof as EXHIBIT E.

16. On May 16, 1974, Plaintiff's counsel advised the E.E.O.C. District Director that Plaintiff would not disclose the information requested absent written assurances that said information would not be revealed to the charging parties, their counsel, or witnesses, and absent safeguards by Defendants to prevent the disclosure of the information by such individuals to others. Plaintiff's counsel observed that the Defendants had already unlawfully disclosed official information to Pittsburgh counsel. A copy of this letter is annexed hereto and made a part hereof as Exhibit F.

17. On May 20, 1974, Plaintiff further inquired of Defendants' General Counsel as to Defendants' policy concerning disclosure of E.E.O.C. case files to charging parties, their attorneys or other persons. A copy of this letter is annexed hereto and made a part hereof as EXHIBIT G.

18. By letter dated July 12, 1974, the Defendants' Associate General Counsel replied to Plaintiff's inquiry, stating that "the present E.E.O.C. policy is to disclose, to charging parties and their attorneys, case files . . .which are relevant to the charging party's case. . . ." Defendants' Associate General Counsel further asserted that a charging party or his attorney may also be granted access to "related case files" which included all cases arising from similar allegations of discrimination against the same respondent. A copy of this letter is annexed hereto and made a part hereof as EXHIBIT H.

19. On October 22, 1974, the Defendants' Pittsburgh District Director served upon Plaintiff a subpoena duces tecum, requiring the production of substantially the same records and information as requested in the aforesaid letter of April 10, 1974 in Paragraph 13, above. A copy of this subpoena is annexed hereto and made a part hereof as Exhibit I.

20. On October 23, 1974, the Plaintiff duly petitioned the Defendants to revoke the subpoena issued by its District Director, in accordance with Defendants' regulations, a copy of which is annexed hereto and made a part hereof as EXHIBIT J.

21. In a Determination dated May 9, 1975, Defendants denied the Plaintiff's petition to revoke the District Director's subpoena. This Determination was not received by Plaintiff until June 4, 1975. A copy of the Determination is annexed hereto and made a part hereof as EXHIBIT K.

22. At all times material herein, Plaintiff was willing to make available the documents requested if Defendants assured Plaintiff that it would treat them confidentially.

23. The above-stated policy and practice of Defendants, pursuant to which they authorize, permit or suffer disclosure of Plaintiff's business records and docu-

ments, are in contravention of Acts of Congress, to wit, Sections 706(b) and 709(e) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5(b), 8(e), and the Trade Secrets Act, Title 18 U.S.C. § 1905.

AS AND FOR A SECOND SEPARATE AND DISTINCT CAUSE OF ACTION

24. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through 23 of this Complaint with the same force and effect as if fully set forth herein.

25. Upon information and belief, Section 1601.20 of the Defendants' regulations, 29 C.F.R. § 1601.20, provides:

> "Neither a charge, nor information obtained pursuant to section 709(a) of Title VII, nor information obtained from records required to be kept or reports required to be filed pursuant to sections 709(c) and (d) of said Title, shall be made matters of public information by the Commission prior to the institution under this title of a court proceeding involving such charge or information. This provision does not apply to such earlier disclosures to the charging party, the respondent, witnesses, and representatives of interested Federal, State and local agencies as may be appropriate or necessary to the carrying out of the Commission's functions under the title, nor to the publication of date derived from such information in a form which does not reveal the identity of the charging party, respondent, or person supplying the information. (As revised October 27, 1971.)"

26. (a) Upon information and belief, on or about February 20, 1975, Defendants adopted and promulgated revised regulations pursuant to § 713(a) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-12(a) (1972), and the 1974 amendments to the F.O.I.A., contained in 29 C.F.R. §§ 1610.1, *et seq.*, which provide, in part:

> "Special disclosure rules apply to the case files for charging parties, aggrieved persons on whose be-

> half a charge has bee filed, and entities against whom charges have been filed. The special disclosure rules are available in the public reading areas of the Commission. Under sections 706 and 709 [of Title VII] case files involved in the administrative process of the Commission are not available to the public." 29 C.F.R. § 1610.17(d) (40 Fed. Reg. 8171, 8174).

(b) The said "special disclosure rules" were first adopted by the Defendants on May 21, 1975, and are included as Section 83 of the E.E.O.C. Compliance Manual. A copy of such rules are annexed hereto and made a part hereof as EXHIBIT L.

27. The above-quoted regulations of the Defendants, and the "special disclosure rules" contained in Section 83 of Defendants' Compliance Manual confer a substantive benefit upon private parties in agency proceedings and therefore constitute substantive agency rules.

28. Defendants are prohibited from issuing substantive rules pursuant to § 713(a) of Title VII, 42 U.S.C. § 2000e-12(a), as amended.

29. The above-quoted regulations and said "special disclosure rules" have been issued in excess of the Defendants' statutory authority.

30. The above-quoted regulations and said "special disclosure rules" void or invalid, and not binding upon Plaintiff, since they have been issued in excess of Defendants' statutory authority.

AS AND FOR A THIRD CAUSE OF ACTION

31. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 27 of this Complaint with the same force and effect as it fully set forth herein.

32. The Defendants' regulations respecting disclosure to charging parties, their attorneys, and others, are incorporated in the above-described "special disclosure rules."

33. These "special disclosure rules" were not adopted pursuant to the notice requirements and rule-making procedures prescribed by 5 U.S.C. §§ 551(5) and 553.

34. The said "special disclosure rules" are invalid, of no effect, and not binding upon the Plaintiff, since they have not been adopted or promulgated to law, as required by 5 U.S.C. § 553.

35. The refusal of Defendants to assure confidential treatment of the subpoenaed information, and its authorization of disclosure to charging parties and others, in the absence of valid rules protecting the interest of providers of information, constitute an unlawful abuse of agency discretion and are arbitrary and capricious.

AS AND FOR A FOURTH SEPARATE AND DISTINCT CAUSE OF ACTION

36. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through 26 of this Complaint, with the same force and effect as if fully set forth herein.

37. The refusal of Defendants to assure the confidential treatment of the subpoenaed records and information described above, and its authorization of disclosure for said documents, constitute an unlawful abuse of agency discretion which is arbitrary and capricious, since said information, is exempt from disclosure under the Freedom of Information Act, 5 U.S.C. § 552(b)(3), as "matters that are . . . specifically exempted from disclosure by statute."

AS AND FOR A FIFTH SEPARATE AND DISTINCT CAUSE OF ACTION

38. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through 26 of this Complaint, as if fully set forth herein.

39. The refusal of Defendants to assure the confidential treatment of the subpoenaed records and information described above, and its authorization and disclosure for said documents, constitute an unlawful abuse of agency discretion which is arbitrary and capricious, since said information is exempt from disclosure under the Free-

dom of Information Act, 5 U.S.C. § 552(b)(4), as "trade secrets and commercial or financial information obtained from a person and privileged or confidential."

AS AND FOR A SIXTH SEPARATE AND DISTINCT CAUSE OF ACTION

40. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through 26 of this Complaint, as if fully set forth herein.

41. The information sought by Defendants, as described in Paragraphs 9, 13 and 19 above, contains personnel and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

42. The refusal of Defendants to assure the confidentiality of the subpoenaed records and information described above, and its authorization of disclosure for said documents, constitute an unlawful abuse of agency discretion which is arbitrary and capricious, since said information is exempted from disclosure under the Freedom of Information Act, 5 U.S.C. § 552(b)(6), which exempts "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy."

AS AND FOR A SEVENTH SEPARATE AND DISTINCT CAUSE OF ACTION

43. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through 26 of this Complaint as if fully set forth herein.

44. The refusal of Defendants to assure the confidentiality of the subpoenaed records and information described above and its authorization of disclosure for said documents, constitute an unlawful abuse of agency discretion which is arbitrary and capricious, since said information is exempted from disclosure under the Freedom of Information Act, 5 U.S.C. § 552(b)(7), which exempts "investigatory records compiled for law enforcement purposes. . ." as therein provided.

ALLEGATIONS AS TO ALL CAUSES JOINTLY AND SEVERALLY

45. Unless and until such time as Defendants assure Plaintiff that such records and information as Plaintiff provides will not be disclosed to charging parties, their attorneys and others, Plaintiff is unable to cooperate in the Defendants' investigation without seriously and irreparably prejudicing its position. Defendants' failure and refusal to grant confidentiality increases the likelihood of unnecessary litigation, attended by massive publicity adverse to Plaintiff's reputation, good will and competitive position.

46. In the event Plaintiff did provide the information subpoenaed by the Defendants and, consistent with the Defendants' stated intention, the information and records are revealed, the public will be given access to highly confidential business information and personal data which could be utilized by competitors, labor unions, employees and other persons to seriously and irreparably damage Plaintiff's business, and the lives, reputations and privacy of Plaintiff's employees and other persons.

47. The Plaintiff has suffered, and will continue to suffer damages to its business in an amount in excess of $10,000.00 unless Defendants are restrained from disclosing records obtained from the Plaintiff to the charging parties, their attorneys or other members of the public.

48. The Plaintiff, its employees and other persons will suffer irreparable injury for which there is no adequate remedy at law should Defendants be permitted to disclose the subpoenaed records and information. Once such documents are disclosed, the information so released can never be recouped by the Plaintiff, and its confidential nature cannot be restored.

49. Disclosure will adversely affect the good will and reputation of the Plaintiff, seriously damage its competitive position, jeopardize the security and safety of its operations, threaten its labor stability and expose Plaintiff to unwarranted litigation and adverse publicity.

WHEREFORE, Plaintiff prays that this Honorable Court:

1. Order, adjudge and decree that the disclosure rules and policies promulgated by Defendants specifically 29 C.F.R. §§ 1601.20, 1601.17(d) and Section 83 of its Compliance Manual, are null and void, or invalid as applied to the Plaintiff; and that disclosure by Defendant of the subpoenaed records and information, absent assurances of complete confidentiality, constitute an impermissible exercise of Defendants' authority and an unlawful abuse of agency discretion.

2. Permanently enjoin and restrain Defendants, their officers, agents, servants and employees, and all persons acting in concert or cooperation with them, from disclosing to any person or member of the public, including charging parties and their attorneys, any of the records or information provided to them pursuant to Defendants' investigation of the charges described above.

3. Grant Plaintiff reasonable attorney fees and litigation costs incurred in this action, and such other and further relief as appears to this Court to be just and proper.

Respectfully submitted,

JACKSON, LEWIS, SCHNITZLER & KRUPMAN
261 Madison Avenue
New York, N. Y. 10016
(212) 697-8200

By: /s/ Robert Lewis
ROBERT LEWIS
ROGER S. KAPLAN
HUNTON & WILLIAMS
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P. O. Box 1535
Richmond, Virginia 23212
(804) 649-3661

By: /s/ Eppa Hunton IV
EPPA HUNTON IV
FRANCIS V. LOWDEN, JR.
HILL B. WELLFORD, JR.
Attorneys for Plaintiff

Dated: July 28, 1976.

EXHIBIT "A"

[*Seal*]

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
Pittsburgh District Office
1000 Liberty Avenue
Room 2038A
Pittsburgh, Pennsylvania 15222

February 25, 1974

In reply refer to:
Charge Numbers
TP12-0454
TP13-0836
TP13-0774
TP12-0324
TP12-0323
TP12-0484
TP12-0562

Personnel Manager
Joseph Horne Company
501 Penn Avenue
Pittsburgh, PA 15222

Dear Sir:

Upon completion of an inventory of charges of discrimination against the Joseph Horne Company, we found that the above-referenced charges remained outstanding. As you know, the Commission is authorized to conduct comprehensive investigations of the above-referenced charges under the provisions of Title VII of the Civil Rights Act of 1964. Accordingly, in order that the Commission may determine all relevant facts we are requesting that you forward us copies of required records and documents and detailed answers to questions contained in the enclosed interrogatory.

Also, enclosed herewith are copies of charges not previously served to the Joseph Horne Company. Upon receipt of the enclosed you are required to sign the original Receipt for Service and return them to this office in the enclosed self-addressed envelope.

In addition to the information and documents required by the interrogatory, you may, should you wish, submit written statements of your position and evidence you deem relevant to a determination of the charge.

Upon receipt of your reply to the interrogatory, we will review the materials and ascertain whether additional information is needed. In which event, we will contact you.

Your response to the enclosed interrogatory, along with the requested records and statements, are to be received in this office within 14 days from receipt of this letter.

We look forward to your prompt response and full cooperation. Should you have any questions, please contact me at 644-3444.

Sincerely,

/s/ Rita M. Smith
RITA M. SMITH
Equal Opportunity Specialist

cc: Louis B. Kushner
Rothman, Gordon, Foreman and Groudine
300 Grant Building
Pittsburgh, Pennsylvania 15219

EXHIBIT "B"

INTERROGATORY

1. Promotional roster for Protection Department including clericals, since 1970 to present. Indicate employee's name, race, sex, job promoted from and salary; job promoted to, salary and date. (Also indicate store each employee is assigned).
2. Employment applications of persons having been hired into the Protection Department since 1969.
3. Submit employment applications of persons applying for security positions and who have not been employed.
4. Attach an employee roster of entire Protection Department since 1969 to present. Include the employee's name, race, sex, date employed, present salary, present job title, and store assigned.
5. Describe training programs for security force in detail and indicate by name which employees were trained under what training program.
6. Submit copies of all employee injury reports for year 1969. Indicate the name, race, sex, and job title for each. Also, describe compensation, benefits and services afforded each person; salaries paid each employee before injury and salary paid each employee following his or her injury.
7. Describe in detail the procedure in apprehending a theft suspect and submit evidence of each apprehension having occurred for years 1971 and 1972.
8. Submit appraisal ratings for store detectives for the year 1971.
9. Describe and/or submit Respondent's wage policy for protective personnel.
10. Describe and submit records, giving indications of qualifications for each job title in the Protection Department.

11. Attach employee records for the following persons:

    Katherine Murray
    Marsue Dingley
    Alice Corvino
    Herman Hartman
    Ken McCarty
    George Fields

12. Submit a listing of disciplinary actions having been taken against employees in the Protection Department since 1971 until present. Include the employee's name, the action and dates involved, and reason for taking such action.

13. Include personnel records of supervisory personnel in the Protection Department including employment applications, qualifications for assuming the position and pay records for first six months while occupying a supervisory position.

14. List the number of stores Respondent has in Western Pennsylvania.

15. Attach an employee roster for each store having a tea room and food services for each store—indicate store location, employee's name, race, sex, date of hire, present job title, present salary, and indicate whether employee is full time or part time.

16. Submit job descriptions for supervisory personnel, salad personnel, relief personnel and qualifications for each.

17. Attach a promotional roster for all food service personnel—include employee's name, race, sex, job promoted from and salary, and job promoted to, salary and date.

18. Include applications for employment of all food service personnel employed during the year 1970.

19. List all food service personnel terminated since 1969 to the present, include employee's name, race, sex, date of hire, job title, date terminated and reason for termination.

20. Submit a separate roster for each store of supervisory personnel, assistant supervisory personnel, and/or department heads—employee's name, race, sex, date of hire, position title, department assigned, salary, date assumed position, and number of employees under, include their race and sex.

21. Attach copies of personnel and/or employment records for Charging Party Katherine Murray.

22. Promotional roster of all stores since January 1970 to December 1973 of sales personnel, section managers, staff assistants and/or assistant buyers and buyers. Include the employee's name, race, sex, job promoted from, salary department and store; job promoted to, salary, department and store, salary and date.

23. Roster of trainees in the Executive Training Program and—those in the Junior Executive Training Program. Roster to include—employee's name, race, sex, dates in program, indicating which program; salary paid while in the program, and job title upon completion of the program, department, store assigned and salary after completion of the program.

24. Listing of persons transferred in 1972 showing employee's name, sex, race, store transferred from, job title and salary; store transferred to, job title, salary and date transferred.

EXHIBIT "C"

[SEAL]

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
Pittsburgh District Office
1000 Liberty Avenue
Room 2038
Pittsburgh, Pennsylvania 15222

April 10, 1974

In reply refer to:
Charge Nos. TP12-0454
TP13-0774
TP12-0484
TP12-0562
TP12-0323
TP12-0324
TP13-0836

Mr. Robert Lewis
261 Madison Avenue
New York, New York 10016

Dear Mr. Lewis:

We are currently attempting to conduct a thorough investigation of the above referenced charges. In the conduct of any investigation of alleged discrimination we must obtain relevant information of a comparative nature and verification of specific items. Obviously we must review records pertaining to the Charging Party and other similarly situated individuals in order to make a comparison of treatment. The records we review need to cover a certain time span within which the alleged discrimination occurred. This time span must be sufficiently broad to enable us to make appropriate comparisons.

Again we ask you to make available to our investigators the records that will allow us to make the proper determinations of the charges.

The following is a list of records we need to review to make a determination of the charges:

TP12-0454—Murray—promotions, wages

1. Employment application of Charging Party Murray and others employed as food service employees at the downtown store for the periods 1970 and 1971.
2. Individual pay period payroll records for above persons for years 1970 and 1971.
3. Personnel action records indicating promotions, dismissals and terminations for the above.

TP13-0774—Carwno—promotions, wages

1. Employment applications of staff assistants and assistant buyers employed at the downtown store for 1972 and 1973.
2. Individual payroll records, by pay periods, for above persons.
3. Employment application for Ken McCarty; his pay records for year 1972. This employee may have been employed at the South Hill store.
4. Employment application for George Fields; personnel action records indicating any promotions and his pay records for years 1971 and 1972 and 1973.
5. Appraisal ratings records for all staff assistants and assistant buyers at all stores for 1970, 1971 and 1973.
6. If salary increases are not indicated on the above, item #5, please include payroll records for the above.

TP12-0484—Kritko

1. On-the-job injury report records during the year 1972.
2. Records indicating employer compensation for the above.

TP12-0562—Denk

1. Job description for clerical personnel in the Protection Office.

2. Qualifications for store detectives.

3. Copy of training requisites for store detective.

4. Copies of personnel actions indicating promotions for clerical personnel in the Protection Office for 1971, 1972 and 1973.

5. Employee applications for Marlene Denk and those above.

TP12-0323—Pollock

Already covered in records requested for others.

TP12-0324—Blake

1. Personnel actions indicating persons terminated from Protection Department since 1971 to present; if the reason for termination is not indicated on this record, please provide record that does so indicate.

2. Copies of arrest records made in 1971 and 1972 by Protection Department personnel that indicate the arresting personnel and the disposition of the arrest.

TP13-0836—Dingley

1. Employment applications of supervisory personnel in the Security Department of the main store (1971, 1972 and 1973).

2. Personnel action records showing promotions for the above (1971, 1972 and 1973).

3. Records of disciplinary action taken against all employees in 1973.

4. Job descriptions for store detectives of that above the classification of store detective.

5. Employment applications for persons of above, and personnel actions indicating dates these persons occupied the above positions and their salaries (1971, 1972 and 1973).

6. Pay records for store detectives, persons directly above the classification of store detectives and those of supervisory personnel.

Please notify us promptly of your decision regarding this request. If we are not permitted access to the information, we will have no other choice but to issue a subpoena, forthwith.

Thank you for your cooperation in this matter.

Yours truly,

/s/ Eugene V. Nelson
EUGENE V. NELSON
District Director

EXHIBIT "D"

April 18, 1974

Mr. Eugene V. Nelson
District Director
Equal Employment Opportunity Commission
Pittsburgh District Office
1000 Liberty Avenue
Room 2038
Pittsburgh, Pa. 15222

Re: Charge Nos. TP12-0454 TP12-0323
TP13-0774 TP12-0324
TP12-0484 TP13-0836
TP12-0562

Dear Mr. Nelson:

This is in reply to your letter of April 10 addressed to me as counsel for Joseph Horne Co.

Prior to making relevant information available to you, we would like written assurances that the information contained in the records you seek will not be disclosed to the charging parties, their counsel, or persons whom you interview during your investigation. Moreover, in the event you are unable to give us satisfactory assurances, we would like to be advised concerning the safeguards you provide which will preclude said persons from in turn transmitting this information to others.

In this connection, we have repeatedly asked your investigator to identify Louis B. Kushner and the reason why he was furnishing a copy of the Commission's letter dated February 25, 1974, and its enclosures, addressed to the Personnel Manager of the Company.

Very truly yours,

JACKSON, LEWIS, SCHNITZLER
& KRUPMAN

RL/mtd

Robert Lewis

EXHIBIT "E"

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
Pittsburgh District Office
1000 Liberty Avenue
Room 2038
Pittsburgh, Pennsylvania 15222

May 3, 1974

In reply refer to:
Charge Nos. TP12-0454
TP13-0774
TP12-0484
TP12-0562
TP12-0323
TP12-0324
TP13-0836

Robert Lewis, Esquire
261 Madison Avenue
New York, New York 10016

Dear Mr. Lewis:

This is in reply to your letter of April 18, 1974 regarding relevant information we need to conduct a thorough investigation of the above referenced charges.

You stated you would like to have written assurances that the information contained in the records will not be disclosed to Charging Parties, their counsel, or persons we interview during the investigation.

Our procedure is to obtain all of the relevant facts related to the allegations. In analyzing and interpreting the data we may find it necessary to discuss with the Charging Party certain information for clarification. We do not make a full disclosure of information in the records. Should the Charging Parties and their counsel contemplate suit, they must be permitted access to the case file which will contain the relevant records. Likewise,

Respondent attorneys have access to the file if suit is contemplated. We have no way of preventing Charging Parties from transmitting information they have. We can only advise them not to do so. We try to make all of our efforts in investigation and conciliation completely confidential so that Charging Parties, Respondents and our staff are the only people knowledgeable about the case.

You also wanted to know about Louis B. Kushner who received copy of correspondence sent to the Personnel Manager of the company. Mr. Kushner is counsel for two Charging Parties.

Through our error a carbon copy of the letter was sent to Mr. Kushner. However, this error did not result in the disclosure of any information in the company's records. Please be assured that the information we request will be used to make an accurate determination of the charges under investigation.

Yours truly,

/s/ Eugene V. Nelson
EUGENE V. NELSON
District Director

EXHIBIT "F"

May 16, 1974

Mr. Eugene V. Nelson
District Director
Equal Employment Opportunity Commission
Pittsburgh District Office
1000 Liberty Avenue
Room 2038
Pittsburgh, Pennsylvania 15222

Re: Joseph Horne Company
Charge Nos. TP12-0454
TP13-0774 TP12-0323
TP12-0484 TP12-0324
TP12-0562 TP13-0836

Dear Mr. Nelson:

This is in response to your letters of April 10 and May 3, which have been given our most serious consideration.

In my letter of April 18, 1974, I asked for "written assurances that the information contained in the records you seek will not be disclosed to the charging parties, their counsel, or persons whom you interview during your investigation."

In your reply of May 3, 1974, you fail to provide these assurances. On the contrary, your Rules and Regulations (Sec. 1601.20) expressly permit such disclosures during the investigation. This section states in part, "This provision (prohibiting disclosure by the Commission prior to the institution of Court proceedings) does not apply to such earlier disclosures as the charging party (or) witnesses . . . ." It is precisely such "early disclosure" during the current investigation that is our concern at this juncture.

In my letter, I also inquired concerning safeguards the Commission provides to preclude the charging party, their counsel, and persons interviewed, in the event of disclosure to them, from transmitting this information to others. You replied that the Commission had no way to prevent the transmitting of this information.

Under these circumstances, we are not furnishing the materials you requested. Our client is apprehensive that to provide this information could allow third parties, such as competitors and labor unions, to use it to its detriment, or subject it to potential lawsuits by other third parties. Furthermore, public disclosure of security apprehensions by protection department personnel might subject our client to further lawsuits and possible criminal prosecution.

That the disclosure of confidential information by your Agency is not speculative is evidenced by our experience in this case to date. In your letter of May 3, you acknowledge that your office erroneously transmitted to Louis B. Kushner, a copy of your letter dated February 25, 1974, addressed to our client. The February 25th letter related to the completion by the Commission of an "inventory of charges of discrimination against the Joseph Horne Company." Enclosed with the letter was a set of 24 interrogatories and copies of two charges. You acknowledge that Mr. Kushner should not have received this information. We agree, but are alarmed at this disclosure. To make public the nature and scope of the Commission's investigation and the identity of charging parties is a serious statutory violation.

If, notwithstanding the above infraction, you can now assure us in writing that information which we may supply will be treated confidentially and not disclosed to witnesses you interview, charging parties, or their counsel, we will provide you with that which is deemed relevant.

We appreciate your need to inquire into such matters and have cooperated with your office in the investigations of these and other charges, and will continue to do so.

If we can be of further assistance, please contact me.

Very truly yours,

JACKSON, LEWIS, SCHNITZLER
& KRUPMAN

RL:YM

Robert Lewis

EXHIBIT "G"

May 20, 1974

William A. Carrey, Esq.
General Counsel
Equal Employment Opportunity Commission
1800 G Street N.W.
Washington, D.C. 20506

Dear Sir:

Would you please inform me whether the Opinions of General Counsel and attached Commission memorandum are presently in effect. In the event they are not, would you please advise me whether they have been replaced by opinion or memorandum of similar import.

In the event the Commission memorandum dated September 15, 1970 is still in effect, would you please send me the full text of this memorandum. In the event that it has been replaced, would you please send me the full text of any current General Counsel Opinion or memorandum covering this subject.

Very truly yours,

JACKSON, LEWIS, SCHNITZLER
& KRUPMAN

Robert Lewis

RL:AIW
Enclosure

Opinion of General Counsel, September 13, 1965

"If an attorney appears on behalf of a complainant, he is entitled to information as to the status of the charge and, thereafter, to receipt of relevant correspondence or other communications relating to his client. The prohibitions against 'public' disclosure set forth in Sections 706(a) and 709(e) do not apply to a complainant's attorney."

Opinions of General Counsel, November 9, 1965 and November 12, 1965

"The investigator's report in a case may be examined by counsel for the charging party after expiration of the statutory period for investigation and conciliation to determine whether or not, in counsel's opinion, the facts justify the commencement of a civil action pursuant to section 706(e) and, if so, to obtain information relevant to drafting the complaint. Before a report is made available, counsel must agree that it will not be used for any other purpose and that the information contained therein will not be disclosed except to the extent necessitated by filing the complaint. After a civil action has been initiated, the investigator's report may be examined by counsel for the respondent for the purpose of preparing a defense. While copies of the inevstigator's report will not be furnished to counsel for the charging party and the respondent, such reports may be examined at the offices of the Commission. When access to an investigator's report is sought by counsel for the charging party or respondent, a member of the staff of the General Counsel or the Office of Compliance will first examine the report and delete or withhold any information in the following categories: (1) observations, remarks, or references which are personal to the investigator and do not constitute factual information developed during the investigation; (2) the names of witnesses who have expressed a desire to remain anonymous or have given information on a confidential basis; (3) statements, occurrences, or events which are essentially conciliatory in nature. Investigators' reports will be made available to counsel

under the foregoing conditions to the extent that limitations of time and staff permit."

Commission Memorandum Dated September 15, 1970

"The investigator's report in a case may be examined by counsel for the charging party after expiration of the statutory period for investigation and conciliation (60 days from the date of filing with the Commission) to determine whether or not, in counsel's opinion, the facts justify the commencement of a civil action pursuant to Section 706(e) and, if so, to obtain information relevant to drafting the complaint. Before a report is made available, counsel must agree that it will not be used for any other purpose and that the information contained therein will not be disclosed except to the extent necessitated by filing the complaint."

EXHIBIT "H"

[SEAL]

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
Washington, D.C. 20506
July 12, 1974

Jackson, Lewis, Schnitzler & Krupman
Attorneys at Law
261 Madison Avenue
New York, New York 10016
Attention: Robert Lewis, Esquire

Dear Mr. Lewis,

I am in receipt of your May 20, 1974 letter in which you requested information regarding the Commission's Interpretations and Opinions, specifically opinions regarding disclosure of EEOC case files to attorneys for charging parties. In December, 1970, the Commission clarified certain misinterpretations about these opinions, which opinions were discontinued after July 1, 1966. (See attached notice.) As the notice indicates those opinions did not affect any persons other than the specific addressee(s).

The present EEOC policy is to disclose, to charging parties and their attorneys, case files, including EEO-1 reports, which are relevant to the charging party's case and which are to be used in connection with contemplated or pending litigation.

In addition, a charging party or his attorney may be granted access to related case files involving a respondent against whom the charging party is contemplating litigation or has litigation pending. Such related case files should include only those files involving charges against the same respondent where the charge involves a charge of discrimination on the same base or bases as alleged by the charging party requesting access to the files. In other words, charges alleging completely dif-

ferent bases from that alleged by the requesting charging party are not related, and the files in those cases should not be disclosed to the charging party or CP's attorney.

If I can be of further help in this matter, please contact me immediately.

Sincerely,

WILLIAM A. CAREY
General Counsel

/s/ Issie L. Jenkins
ISSIE L. JENKINS
Associate General Counsel
Legal Counsel Division

FEDERAL REGISTER
Volume 35, DECEMBER 9, 1970
Page 18692

Notices

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

INTERPRETATIONS AND OPINIONS OF THE COMMISSION

The Equal Employment Opportunity Commission (hereinafter referred to as the Commission), in order to dispel an apparent misunderstanding, on the part of a number of respondents, with respect to the materials constituting a "written interpretation or opinion of the Commission" within the meaning of section 713(b) of the Civil Rights Act of 1964, 42 U.S.C. section 2000e-12 (b), invites specific attention to the provisions of § 1601. 30 of the Commission's Procedural Regulations, 29 CFR 1601.30. The provision referrred to has, since July 1, 1965, specifically restricted the meaning of the phrase "written interpretation or opinion of the Commission" to correspondence entitled "opinion letter" and signed by the General Counsel on behalf of the Commission (29 CFR 1601.30(a)). Matter issued pursuant to 29 CFR 1601.30(a) is issued to a specific addressee(s) and has no effect upon situations other than that of the specific addressee(s).

Accordingly, matter appearing in the Quarterly and Annual Digests of Legal Interpretations, formerly issued by the Office of the General Counsel and discontinued subsequent to July 1, 1966, neither met nor were intended to meet the standards required of a "written interpretation or opinion of the Commission" within the meaning of the Commission's procedural regulations, 29 CFR 1601.28-1601.30, or section 713(b), 42 U.S.C. section 2000e-12(b). Similarly, matter appearing in the commercial reporting services erroneously entitled, "opinion letter" or "General Counsel Opinion" do not meet the standard required of a "written interpretation or opin-

ion of the Commission" within the meaning of the Commission's procedural regulations, 29 CFR 1601.28-1601.30, or section 713(b), 42 U.S.C. section 2000e-12(b).

This notice shall be effective upon publication in the FEDERAL REGISTER.

Signed at Washington, D.C., this 1st day of December 1970.

WILLIAM H. BROWN III,
Chairman.

[F.R. Doc. 70-16503; Filed, Dec. 8, 1970; 8:46 a.m.]

EXHIBIT "I"

UNITED STATES OF AMERICA

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
DISTRICT OFFICE

SUBPOENA AD TESTIFICANDUM/DUCES TECUM
No. PI-006

CHARGE NO. TPI2-0454 et al.,
see page 2

In the matter of Katherine Murray et. al., (see page 2) vs. Joseph Horne Company.

To: James Downing, Personnel Director
(Name)

Joseph Horne Co., 4th Floor, 501 Penn Ave., Pittsburgh, PA 15222
(Address)

Request therefore having been made by the undersigned District Director YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE Rita Smith, Equal Employment Specialist of the Equal Employment Opportunity Commission at 2038A Federal Building in the City of Pittsburgh on October 30 at 10 o'clock a.m. of that day, to [ ] Testify [xx] Produce and bring with you at said time and place the following documents The documents are described on the attached 4 pages, on each of which the District Director's signature appears.

Pursuant to Section 1601.15, EEOC Procedural Regulations, 29 C.F.R. Section 1601.15, if the addressee intends not to comply with this subpoena, he must, within 5 days after the date of service (excluding Saturdays, Sundays and legal holidays) petition by mail, the Director of Compliance, 1800 G Street, N.W., Washington, D.C. 20506 (also serving a copy upon the District Director named below) to revoke or modify the subpoena. The

District Director will grant no extensions of time except in extraordinary circumstances. It is advisable that the addressee include a Certificate of Service as to the date on which the petition is mailed. The petition shall state each ground upon which it relies.

DATE

October 18, 1974

DISTRICT/DEPUTY DIRECTOR *(Typed name)*

EUGENE V. NELSON

FOR THE COMMISSION *(Signature)*

/s/ Eugene V. Nelson

NOTICE TO WITNESS. Witness fees for attendance, subsistence, and mileage under this subpoena, if any, shall be paid by Commission where the witness submits this subpoena with the voucher when claiming reimbursement to said District Office.

Attachment to Subpoena No. PI-006, dated October 18, 1974 in the following charges:

TPI2-0454	Katherine Murray v. Hornes
TPI3-0774	Alice M. Corvino v. Hornes
TPI2-0562	Marlene Denk v. Hornes
TPI2-0324	Lois Blake v. Hornes
TPI2-0323	Helen O. Pollock v. Hornes
TPI2-0484	Mary Kritko v. Hornes
TPI3-0836	Marsue Dingley v. Hornes

1. TPI2-0454—Murray

    1. Employment application of Charging Party Katherine Murray.

    2. Employment applications of all Food Service employees at downtown Pittsburgh store, 1970 and 1971, designated by race.

    3. Individual pay period payroll records for Katherine Murray and all other Food Service employees at downtown stores, 1970 and 1971, designated by race.

    4. Personnel action records indicating promotions and discharge for above persons.

2. TPI3-0774—Corvino

    5. Employment application of staff assistants, buyers and assistant buyers employed at downtown store, 1972 and 1973.

    6. Individual payroll records, by pay periods, of those employees described in Item No. 5 for the years 1972 and 1973.

    7. Employment application and 1972 pay records for Mr. Ken McCarty, formerly a buyer in the Luggage Department, South Hills Store.

    8. Employment application of George Fields, downtown store; personnel action records indicating his promotions for the years 1971, 1972 and 1973.

    9. Evaluation and ratings records for all staff assistants and assistant buyers at all stores located

in Allegheny County for the years 1970, 1971, 1972 and 1973.

10. Produce payroll records for the above employees described in Item No. 5 for the years 1970 and 1971.

11. Produce roster of promotions for the positions of staff assistants, assistant buyers and buyers at the downtown store for the year 1972; designate by name and sex.

12. Produce list of trainees in the Executive Training Program for the year 1973; designate by sex and salary.

3. TPI2-0362—Denk

13. Produce job description, if extant, for position/s of clerical personnel in the Security Protection Department.

14. Produce personnel manual and/or other written documents indicating job qualifications for the position of store detective.

15. Produce written training requisites for the position of store detective, if extant.

16. Copies of personnel records indicating promotions of clerical personnel in the Security Protection Department, Downtown Store, for 1971, 1972 and 1973; identify by sex.

17. Employee applications for Marlene Denk and all other clerical personnel in the Security Protection Department for 1971, 1972 and 1973.

TPI2-0324—Blake

18. Personnel action records indicating persons discharged from the Security Protection Department, Downtown Store, 1971 through 1973.

19. Copies of arrest records made in 1971 and 1972 by Security Protection Department personnel that indicate the arresting personnel and the disposition of each arrest.

TPI2-0323—Pollock

TPI2-0484—Kritko

TPI2-0324—Blake

20. Payroll records for all personnel in the Security Protection Department, Downtown Store, for the years 1971, 1972 and 1973.

TPI3-0836—Dingley

21. Employment applications of supervisory personnel in the Security Protection Department of the Downtown Store for the years 1971, 1972 and 1973.

22. Personnel action records showing promotions into supervisory positions in the Security Protection Department, Downtown Store, for the years 1971, 1972 and 1973.

23. Records of all disciplinary action taken against all employees in the Security Protection Department of the Downtown Store in the year 1973.

24. Job description for the position of store detective, supervisory and non-supervisory positions.

25. If the records do not exist in the form requested in Items numbered two, three, eleven, twelve and sixteen above, production of the relevant information requested in such other form as most substantially provides the Commission with the requested information or, in the alternative, access to any records of Respondent which contain evidence described in the items enumerated above but in a form different from that specifically described in these items, will be accepted as compliance.

FOR THE COMMISSION (Signature)

/s/ Eugene V. Nelson

DATE

October 18, 1974

DISTRICT DIRECTOR (Typed name)

EUGENE V. NELSON

EXHIBIT "J"

452079
Certified Mail 452080
Return Receipt Requested

October 23, 1974

Director of Compliance
Equal Employment Opportunity Commission
1800 G Street, N. W.
Washington, D.C. 20506

Re: Katherine Murray et. al. and
Joseph Horne Company
Charge Nos. TPI 2-0454, TPI 3-0774,
TPI 2-0323, TPI 2-0562, TPI 2-0484,
TPI 2-0324, TPI 3-0836
Subpoena No. PI-006

Dear Sir:

Enclosed please find the original and one copy of the Employer's Petition To Revoke Subpoena issued by the District Director of the Pittsburgh District Office on October 18, 1974 and served upon the Employer on October 22, 1974 by mail. A copy of this Petition has been mailed to Eugene V. Nelson, District Director of the Pittsburgh District Office.

Very truly yours,

JACKSON, LEWIS, SCHNITZLER & KRUPMAN

ROBERT LEWIS

RL:YM
ENC.
CC: Eugene V. Nelson

UNITED STATES OF AMERICA
EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION

Charge Nos. TPI 2-0454
TPI 3-0774
TPI 2-0562
TPI 2-0324
TPI 2-0323
TPI 2-0484
TPI 3-0836

IN THE MATTER OF:

KATHERINE MURRAY ET AL.,
CHARGING PARTIES

—and—

JOSEPH HORNE COMPANY, EMPLOYER

To: Director of Compliance
1800 G Street, N. W.
Washington, D. C.

PETITION OF *EMPLOYER*
TO REVOKE SUBPOENA NO. PI-006

On October 22, 1974, the Employer was served with Subpoena No. PI-006, a copy of which is attached hereto, calling for the production of records and documents under twenty-five (25) separate headings, such production to occur in the office of Rita Smith, Equal Employment Specialist of the Pittsburgh District Office of the Equal Employment Opportunity Commission at 2038A Federal Building, Pittsburgh, Pennsylvania 15222 on October 30, 1974 at 10:00 o'clock A.M. The Employer, by its attorneys, hereby petitions the Director of Compliance to revoke said subpoena.

This petition is based on the following grounds:

1. That the charges cited above, and the nature of information sought in investigation thereof, have been made public by the Commission in violation of Section 706(b) and 709(e) of the Act, and Section 1601.20 of the Commission's Rules and Regulations, 29 C.F.R. 1601.20.

2. That to provide access to the documents requested by said subpoena could permit third parties, such as competitors and labor unions, to use same to the Employer's detriment.

3. That to provide access to certain of the documents requested by said subpoena could subject the Employer to civil legal proceedings or criminal prosecution.

4. That evidence sought by the subpoena does not relate to any matter in question in this proceeding and is not germane to any lawful subject of inquiry.

a. The instant subpoena would require the Employer to provide for the Commission documentary evidence concerning the race of its employees, although six of the seven complaints herein allege discrimination as based solely on sex.

b. The instant subpoena would require the Employer to provide for the Commission documentary evidence concerning the employees, and its personnel practices and procedures, at all of its facilities, although the complaints herein allege discrimination at only two such facilities.

c. The instant subpoena would require the Employer to provide for the Commission documentary evidence concerning the procedure for promotion and the candidates considered for numerous positions for which the charging parties were not and could not have been considered, because of factors wholly unrelated to their sex.

5. That the subpoena would require the Employer to compile information and documentary material not now extant and not normally required under traditional standards of discovery.

6. That the evidence sought by the subpoena is not described with sufficient particularlity.

7. That the documents called for by said subpoena number in the hundreds and it would be oppressive and unreasonable to require the Employer to produce said documents.

8. That said subpoena calls for the production of records relating to a time not pertinent, relevant or admissible to any matter in question in this proceeding.

9. That witness or mileage fees have not yet been tendered to the Employer as is required by law.

WHEREFORE, the Employer respectfully requests that Subpoena PI-006, issued by the District Director of the Pittsburgh District Office on October 18, 1974, be revoked, vacated and set aside.

/s/ Robert Lewis
ROBERT LEWIS
JACKSON, LEWIS, SCHNITZLER & KRUPMAN
Attorneys for Employer
261 Madison Avenue
New York, New York 10016

Dated: New York, New York
October 23, 1974.

CERTIFICATE OF SERVICE

I certify that the foregoing Petition to Revoke Subpoena was duly served on Mr. Edward Pena, the Director of Compliance, Equal Employment Opportunity Commission, on October 23, 1974, by depositing a copy of the same in the United States Mail, securely sealed in an envelope with postage fully prepaid, addressed to him at the following address: 1800 G Street, N. W., Washington, D. C. 20506; and

I certify that the foregoing Petition to Revoke Subpoena was duly served on Eugene V. Nelson, District Director, Equal Employment Opportunity Commission, on October 23, 1974, by depositing a copy of the same in the United States Mail, securely sealed in an envelope, with postage fully prepaid, addressed to him at the following address:

Eugene V. Nelson
District Director
Pittsburgh District Office
Equal Employment Opportunity Commission
2038A Federal Building
Pittsburgh, Pennsylvania 15222

Dated: New York, New York
October 23, 1974

/s/ Peggy L. Braden
PEGGY L. BRADEN

EXHIBIT "K"

[SEAL]

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
Washington, D.C. 20506

IN THE MATTER OF:

Katherine Murray et al. Charging Parties	Charge Nos. TPI 2-0454 TPI 3-0774 TPI 2-0562 TPI 2-0324 TPI 2-0323 TPI 2-0484
v.	
Joseph Horne Company Respondent-Petitioner	

Subpoena No. PI-006

Addressee: James Downing,
Personnel Director

DETERMINATION ON PETITION TO REVOKE
AND/OR MODIFY SUBPOENA

Respondent-Petitioner having been served with a subpoena duces tecum issued by the District Director pursuant to Section 710 of the Civil Rights Act, as amended, has timely filed a petition to revoke or modify the subpoena. The requisite number of Commissioners having reviewed the petition pursuant to Section 1601.15(b) of the Commission's Procedural Regulations, and having decided that the petition is without merit, the Commission hereby denies the petition for the reasons stated below.

Respondent-Petitioner raises several objections to the subpoena based on its belief that the "the charges . . . and the nature of information sought in investigation thereof . . . have been made public by the Commission in violation of Section 706(b) and 709(e) of the Act, and Section 1601.20 of the Commission's Rules and Regulations . . . ." However, the record indicates that no information regarding these charges has been transmitted to the public

in violation of the sections of the statute and the Commission's Procedural Regulations cited above. Respondent-Petitioner is apparently referring to the fact that certain information regarding one of the charges was sent to that Charging Party's attorney. However, under no circumstances can a Charging Party or his or her attorney be considered to come within the statute's proscription against making a charge public. The section of the Procedural Regulations cited by Respondent-Petitioner in support of its argument specifically excepts Charging Parties from the confidentiality section of the statute. The regulation provides in pertinent part:

> Neither a charge, nor information obtained pursuant to Section 709(a) of Title VII, shall be made matters of public information by the Commission prior to the institution of any proceedings under this Title involving such charge or information. This provision does not apply to such earlier disclosures to the charging party, the respondent, witnesses, and representatives of interested Federal, State and local agencies as may be appropriate or necessary to the carrying out of the Commission's functions under the Title . . . 29 CFR 1601.20.

Because of the privilege existing between an attorney and his or her client, we conclude that any disclosure to a Charging Party's attorney is also permissible.

As part of this same argument Respondent-Petitioner also claims that by providing Charging Parties with access to the documents requested by the subpoena, certain third parties, such as competitors and labor unions, could use the information obtained to Respondent-Petitioner's detriment or could involve Respondent-Petitioner in civil or criminal legal proceedings. We do not see how providing certain information to a Charging Party and her attorney could lead to the result anticipated by Respondent since by doing so the Commission is in no way making any information public. Of course, if the Commission reaches a determination as to reasonable cause on this case and conciliation attempts fail, then either the Com-

mission or the Charging Parties may seek recourse in the courts. But this possibility existed the moment the Charging Parties filed their charges and Respondent may not request revocation of this subpoena on the ground that information requested by it may ultimately require Respondent to defend its employment practices in court. We conclude that Respondent-Petitioner's arguments concerning disclosure was without merit.

Respondent-Petitioner's second major contention is that the "evidence sought by the subpoena does not relate to any matter in question in this proceeding and is not germane to any lawful subject of inquiry." More specifically Respondent-Petitioner objects to the fact that the subpoena requires it to provide evidence concerning the race of its employees although only one of the seven Charging Parties alleges that she was discriminated against because of her race. We find this argument to be unpersuasive. While six of the seven complaints allege discrimination on the basis of sex, one does allege discrimination on the basis of race. All of the charges, including the one involving race discrimination, are broad-based class charges and therefore necessarily call for an investigation that goes beyond the employment record of the individual Charging Party. In connection with the race discrimination charge, the subpoena merely seeks information concerning persons similarly situated to Charging Party, that is, information concerning other employees in the Charging Party's department at the store in which she worked. The employees are to be designated by race only. Obviously the Commission's investigator is seeking comparative information relating to Respondent's treatment of Blacks generally and Charging Party in particular as compared to treatment of similarly situated white employees in the same department. It is well settled that comparative data of this kind is probative of issues raised in employment discrimination cases. *McDonnell-Douglas Corp* v. *Green*, 411 U.S. 792 (1973); *Georgia Power Co.* v. *EEOC*, 412 F.2d 421 (5th Cir. 1969); *EEOC* v. *University of New Mexico*, —— F. Supp. ——, 7 EPD para. 9118 (D. N.M. 1973).

Continuing with this same line of argument, Respondent-Petitioner also claims that it would have to provide information concerning all of its facilities although the charges allege discrimination at only two such facilities. While one item in the subpoena does request certain personnel records from each of Respondent's Alleghany County stores, all the other items seek information regarding employees and employment practices at Respondent's downtown store only. The single item in question seeks information pertaining to a Charging Party who was employed in several of Respondent-Petitioner's stores. Her charge alleges that she was not promoted because of her sex. She was employed as a staff assistant and, apparently, the next position in her line of progression is that of assistant buyer and then buyer. Because there are only a few assistant buyers and buyers in any given store, the need to obtain a sufficient sample on which to base a comparative study requires that information regarding these positions be obtained from more than one or two facilities. Thus we are not persuaded that modification of this part of the subpoena is called for.

Related also to the claim that the evidence sought by the subpoena is not "germane" to the charges is Respondent-Petitioner's contention that the information requested concerns procedures for promotions and candidates considered for numerous positions for which the Charging Parties were not and could not have been considered, because of factors wholly unrelated to their sex. We do not agree. Most of the Charging Parties were or are in Respondent-Petitioner's Security Department. With respect to those Charging Parties the subpoena requests job descriptions of various Security Department positions, personnel actions on employees in the Department, including promotions and discharges, and the like. Because Charging Parties allege that they have been denied promotions in this Department because of their sex, this kind of evidence is highly relevant. It may be that one or more of the Charging Parties did not possess the qualifications for promotion, but that fact cannot be established without evidence showing what qualifications were necessary for the position or promotion in question and whether Charging Parties were not as well qualified

as those individuals who did receive promotions. Respondent-Petitioner's bald assertion that they were not qualified will not suffice. Furthermore, it is not for Respondent to determine what documents may or may not be relevant to an investigation of a charge of employment discrimination against it. *EEOC* v. *University of New Mexico*, 7 EPD para. 9118 (D. N.M. 1973).

Respondent-Petitioner also claims that the subpoena would require it to compile information and documentary material not now extant and not formally required under traditional standards of discovery. If the information requested does not exist in any form then obviously Respondent-Petitioner cannot be required to produce it. However, we do not believe that is the situation in this case. Rather, Respondent-Petitioner appears to be claiming that it cannot be required to compile the information requested into list form from a variety of different sources. However, the subpoena does not require Respondent-Petitioner to undertake any such effort. Most of the items in the subpoena seek employment applications, evaluations, payroll records, job descriptions, personnel manuals and the like—discrete documents which exist in the form requested and which require nothing more than that they be turned over in that form to the Commission's representative. To the extent that certain of the documents or records requested *may* not exist in the form described in the subpoena, Item 25 specifically permits Respondent-Petitioner to produce the relevant information "in such other form as most substantially provides the Commission with the requested information." In the alternative, Item 25 provides that "access to any records of Respondent which contain evidence described in the items enumerated above . . . will be accepted as compliance." Accordingly, we conclude that Respondent-Petitioner's argument is without merit.

Respondent-Petitioner contends that "the evidence sought by the subpoena is not described with sufficient particularity." We disagree. All that is required is that the documents be specified to the extent necessary for Respondent to be able to identify and produce the requested information. In this case we do not believe that there is

any question as to what information is needed. The subpoena seeks certain personnel and payroll records of the Charging Parties, other named individuals and other employees identified by job title or department and store location. The subpoena also seeks job descriptions, if any, for certain specified job titles, personnel manuals and other readily identifiable documents or records. To expect the Commission to supply the exact title, date of issuance or other similar information for each document requested is unreasonable since the Commission cannot possibly obtain that information without first seeing the subpoenaed documents. The Commission has already indicated that if the information requested does not exist in the exact form described in the subpoena, providing access to records which do contain the information is a permissible alternative to producing the documents themselves.

Respondent-Petitioner also argues that it would be unduly burdensome and oppressive to require that it produce the documents called for by the subpoena, which according to Respondent-Petitioner, number in the hundreds. However, it is well-established that where the Commission finds, as it does here, that the records sought are relevant or material to the charge or charges under investigation, a Respondent's assertion of burdensomeness will not warrant modification or revocation of a subpoena. Any inconvenience or difficulty in compliance (which is inherent in *any* compulsory process proceeding) must be considered as part of the social burden of living under government. *H. Kessler & Co.* v. *EEOC*, 53 F.R.D. 330 (N.D. Ga. 1971), *affirmed in pertinent part*, 468 F.2d 25 (5th Cir. 1972), *reaffirmed in pertinent part en banc*, 472 F.2d 1147 (5th Cir. 1973), cert. denied, —— U.S. ——, 5 EPD para. 8659 (1973).

Respondent-Petitioner additionally objects to the subpoena on the ground that it "calls for the production of records relating to a time not pertinent, relevant of admissible to any matter in question in this proceeding." For the most part the subpoena requests records covering a period of one or two years. In some instances, however, documents covering a three year period are sought, and

one item requests evaluations and rating records for certain employees over a period of four years. We note that Charging Parties have worked for Respondent-Petitioner for a number of years and that several of the charges date back to 1971 and 1972, while others are more recent. These circumstances, coupled with the fact that the subpoena represents seven charges all of which raise class issues, justify the time period for which records are being sought. We believe that the scope of the subpoena is entirely consistent with the discovery powers of the Commission recognized in numerous judicial decisions. E.g., *Georgia Power Co.* v. *EEOC*, 412 F.2d 421 (5th Cir. 1969) (discovery of data dating five years prior to the alleged violation permitted); *Sheet Metal Workers, Local 104* v. *EEOC*, 439 F.2d 237 (9th Cir. 1971) (discovery of events occurring prior to the effective date of the 1964 Act allowed). Accordingly, we do not feel that the period covered by the subpoena is unreasonable.

Respondent's final ground for requesting revocation of the subpoena is that witness or mileage fees have not yet been tendered to it. While witness fees are provided for in Section 710 of the Act and in the Commission's regulations, such fees are to be paid only in cases where testimony from witnesses is called for and are not appropriate for a subpoena duces tecum.

DETERMINATION

Respondent's petition to revoke the subpoena is denied.

The subpoena is modified to the extent that the addressee therein is required and directed to appear before James S. Bures, District Court of the Equal Employment Opportunity Commission in the City of Pittsburgh, Pa., on June 13, 10 a.m., 1975, to produce all of the documents described in the subpoena.

Approved by the Commission;
as demonstrated by the attached statements:

/s/ Edwardo Pena
Director of Compliance

Date: 5-9-75

/s/ Illegible

EXHIBIT "L"

DIRECTIVES TRANSMITTAL

Number 150

Date: May 21, 1975

SUBJECT: EEOC COMPLIANCE MANUAL.

Purpose. This transmittal covers a new Section 83, Disclosure of Information to Case Files of Volume 1, Procedures, EEOC Compliance Manual, which prescribes procedures for making available information contained in case files of EEOC.

Effective Date. Upon Receipt.

Distribution. Compliance Manual Holders, Volume 1.

Supply of Forms. EEOC Form 167, Agreement of Nondisclosure, is available through normal supply channels.

Obsolete Data. None.

Approved /s/ Edwardo Pena
Director, Office of Compliance

Approved /s/ Illegible
Executive Director

Approved /s/ Illegible
General Counsel

SECTION 83

DISCLOSURE OF INFORMATION IN CASE FILES

83.1 *General*—Section 709(e) of Title VII makes it unlawful for any employee of the the Commission to make public information obtained by the Commission pursuant to its general authority to investigate charges of discrimination prior to the institution of any proceeding under Title VII. The Fifth Circuit Court of Appeals has held (*Kessler* v. *EEOC*, 472 F.2d 1147 (5th Cir. 1973) 5 FEP Cases 405 that granting access to such information to charging parties or their attorneys prior to the institution of a proceeding under Title VII is not "making public" within the meaning of that term as used in section 709(e).

83.2 *Exceptions*

(a) *Disclosure of Information in Response to Subpoenas, Demands or Order of Courts or Other Authorities*—The procedures and policies of this section do not apply to disclosures of information from case files in response to subpoenas, demands or orders of courts or other authorities. The procedures in sub part B of the Commission's Regulations on Availability of Records (29 CFR 1610.30 through 1610.36) are to be followed in these circumstances.

(b) *Disclosure of Information When the Commission is a Party to Litigation*—Once a case file has been referred to Office of General Counsel to be used in litigation to which the Commission is a party or in any other case where the Commission is a party to litigation, the Office of General Counsel will control disclosures of information and all persons requesting disclosure from District Offices or National Programs Division (NPD) will be referred to the Office of General Counsel as provided in section 1610.34 of the Commission Regulations.

(c) *Disclosure of Information in Case Files to Representatives of Interested Federal, State or Local Authorities*—The procedures and policies of this section do not apply to disclosures of information in case files to representatives of interested Federal, State or local agencies. Such disclosures are to be made as appropriate and necessary to carrying out the Commission's responsibilities under the law in accordance with section 709(b) of Title VII and section 1601.20 of the Commission's Procedural Regulations.

83.3 *Conditions Precedent to Disclosure*—Information in case files may be disclosed on request to the persons indicated in 83.5 under the following conditions:

(a) *In connection with Pending or Contemplated Litigation*—Information in case files may be disclosed provided that the request is made for the purpose of reviewing information in the case file in connection with pending or contemplated litigation. Access to the information will not be granted prior to the expiration of the 180 day period prescribed at section 706(f)(1) of Title VII except when the charge has been dismissed or the aggrieved or charging party demonstrates a compelling need for access prior to the expiration of the 180 day period; and

(b) *Persons Requesting Disclosure Must Agree Not to Make the Information Public*—Information in case files may be disclosed only on the condition that the persons requesting disclosure agree in writing not to make the information obtained public except in the normal course of a civil action or other proceeding instituted under Title VII.

83.4 *Use of EEOC Form 167, Agreement of Nondisclosure (See Exhibit 83-A).* Each person to whom disclosure is made will sign a separate EEOC Form 167, Agreement of Nondisclosure, check the appropriate block to indicate identification and provide a complete address and telephone number. Completion of EEOC Form 167 will be accepted as evidence that the conditions in 83.3 are agreed to by the person requesting disclosure. The

Commission representative who signs the EEOC Form 167 on behalf of the Commission will normally be the District Counsel, District Director or other responsible professional employee in a supervisory position. Retain the original in the case file. A copy may be provided to the person requesting disclosure, if requested.

83.5 *Persons to Whom Information in Case Files May be Disclosed*—Information in case files may be disclosed on request, after complying with the expunction requirements discussed in 83.6, to *only* the following persons:

(a) Charging Parties and their attorneys (except as otherwise provided in 83.5(c) below):

(b) Aggrieved persons in case files involving Commissioner Charges and their attorneys provided that such persons have been notified of their status as aggrieved persons pursuant to section 1601.25(c) of the Commission's Procedural Regulations;

(c) Persons or organizations filing on behalf of an aggrieved person, provided that the aggrieved person has given written authorization to the person who filed on his or her behalf to act as the aggrieved person's agent for this purpose and their attorneys;

(d) Employees of Commission funded groups such as the Mexican-American Legal Defense and Education Fund and Lawyer's Committee for Civil Rights Under Law for the purpose of reviewing information in case files to determine the appropriateness of referral to private attorneys as a service to charging parties, provided that the conditions in 83.4 and 83.6 have been met and that the Commission funded group is reviewing the information at the request of the charging party;

(e) Respondents and their attorneys, provided that the charging party or aggrieved person has filed suit under Title VII; and

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

AGREEMENT OF NONDISCLOSURE

Pursuant to Section 706(g)(1) of Title VII, the EEOC shall have power to cooperate with private individuals in order to accomplish the purposes of Title VII.

PERSON REQUESTING DISCLOSURE

☐ CHARGING PARTY	☐ RESPONDENT	☐ AGGRIEVED PERSON ON WHOSE BEHALF CHARGE IS FILED	☐ AGGRIEVED PERSON IN COMMISSIONER CHARGE	☐ NAMED PARTY IN CLASS ACTION

ATTORNEY REPRESENTING

☒ CP	☐ RESPONDENT	☐ AGGRIEVED PERSON ON WHOSE BEHALF CHARGE IS FILED	☐ AGGRIEVED PERSON IN COMMISSIONER CHARGE	☐ NAMED PARTY IN CLASS ACTION

CASE CHARGE NUMBER OF FILE(S) TO BE DISCLOSED

YP94-1151 and YP94-1152

STATEMENT

I John V. Evans (Typed name), request disclosure of Commission case file(s) in connection with contemplated or pending litigation. I agree that the information disclosed to me will not be made public or used except in the normal course of a civil action or other proceeding instituted under Title VII involving such information.

In witness whereof, this agreement is entered into as of the 5th day of May 19 75, by the Equal Employment Opportunity Commission representative named below and the person requesting disclosure.

John V. Evans 999-919-1010

(Person requesting disclosure (Signature and telephone number/area code))

Lopez, Evan and Fenwick, 1302 Dawn St., Point Barrow, Alaska 99999

(Complete address)

Jane Jones, District Counsel, Point Barrow District Office

(EEOC representative (Signature and title))

EEOC FORM MAY 75 167

Exhibit 83-A

(f) Any party in a class action complaint, provided that such party is actually named in the complaint as filed in Federal district court or is actually named by court order as a class member.

83.6 *Expunction of Confidential Material from Case Files Prior to Disclosure*

(a) *General*—Expunction of confidential material pursuant to this section will be strictly supervised by the District Counsel or Attorney Advisor in NPD, the District Director, Chief, NPD, or other responsible professional employee in the absence or non-availability of an attorney or the District Director. Supervision of expunction will not be further sub-delegated to non-professionals.

(b) *Statements and Identities of Witnesses Promised Anonymity*—Remove any information concerning the identities and statements by witnesses who have been promised anonymity by a Commission representative during the course of investigation or conciliation. The statements of such witnesses are to be clearly marked by the Commission representative who promised anonymity by placing the words "Confidential Witness—Do not Disclose this Statement" at the top and bottom of each page of each statement. The confidential witness's name is to be followed by the words "Confidential Witness" when used on the index to tabs in the case file. The name is to be obscured and the index photocopied so that only the words "Confidential Witness" appears on the index provided to persons requesting disclosure. A similar procedure is to be followed each place the confidential witness's name or information obtained from the witness appears in the case file.

(c) *Review Sheet on Commission Decisions*—Remove the review sheet covering Commission Decisions before disclosure because this review sheet records information concerning intra-governmental advisory and deliberative communications.

(d) *Intra-Agency and Inter-Agency Memoranda*—Remove the Investigator's Memorandum. Remove all memoranda, notes and other documents prepared by Commis-

PREVIOUS PAGE WAS BLANK

sion attorneys or received from other governmental agencies which contain recommendations or mental impressions as to strategy for settling the case or litigation. Remove all memoranda or notes from Regional Litigation Offices, from Office of General Counsel and from the Department of Justice.

(e) *Any Data on Other Respondents*—Remove all data naming other respondents which may be contained in the case file. The names of other respondents usually will be contained on EEOC Form 155, Pre-Investigation Charge Analysis, if charging party has filed charges against other respondents or on deferral correspondence which sometimes includes lists of charges deferred. The names of other respondents is to be obscured from such documents before disclosure.

(f) *Conciliation Materials*—All information in case files concerning the Commission's attempts to settle the charge by the informal methods of conference, conciliation and persuasion will be removed. The material to be removed includes: EEOC Form 134, Conciliation Case Analysis; EEOC Form 159, Log of Conciliation Actions; EEOC Form 156, Final Conciliation Summary; EEOC Form 180, Conciliation Benefits; Commission and respondent proposals and counter proposals; and all correspondence and any other information in the case file similar to that customarily contained in the items cited. EEOC Form 153, Invitation to Participate in Settlement Discussion, will be disclosed.

83.7 *Scope of Disclosure Permitted*

(a) *Employer Information Reports (EEO-1) or Other Reports Prescribed by the Commission Pursuant to Section 709(c)*—All reports required by the Commission from respondents covered by Title VII such as Employer Information Report (EEO-1), State and Local Government Information Report (EEO-4) will be disclosed if available in the District Office or National Programs Division notwithstanding the fact that these reports were not actually in the charging party's case file.

(b) *Information in Case Files Obtained from OFCC or Contract Compliance Agencies Under the EEOC/*

OFCC Memorandum of Understanding—Paragraph 5 of the Memorandum of Understanding between EEOC and OFCC signed September 11, 1974 provides as follows:

> "All requests by third parties for disclosure of information shall be referred to the agency which initially compiled or collected the information".

Information obtained from a contract compliance agency or OFCC pursuant to this agreement will be disclosed only to those persons entitled to disclosure under 83.5 and subject to the conditions in 83.3 and 83.4. Requests for this information from persons other than those in 83.5 should be referred to the agency which initially compiled or collected the information in accordance with section 1610.6 of the Commission's Regulations and EEOC Order 151 entitled: Disclosure of Information Under the Freedom of Information Act (but also see 83.2(c)).

(c) *Other Case Files Involving the Same Respondent*

(1) *General*—The Commission's policy is to cooperate with private Title VII litigants and to lend appropriate assistance in framing proper court complaints by allowing, when requested, access to information in other case files involving the same respondent which are available in the same District Office or National Programs Division, provided that the information in the other case files is relevant or material to the private litigant's case.

(2) *Determining When Information in Other Case Files is Relevant or Material*—Information in other case files is relevant or material when other case files contain charges, investigations or determinations involving the same basis (e.g. sex, religion, national origin, race) with limited exceptions such as when the private litigant's case alleged discrimination in promotion against females and the other case file involved a male's claim that he was not hired because of respondent's policy of not hiring long haired males. Other case files may be relevant or material if they involve a different basis only when the treatment afforded one protected class is probative of treatment afforded the private litigant's class (e.g. systemic discrimination against Spanish Surnamed

Americans is often probative as to treatment accorded blacks and vice versa).

(3) *Safeguard the Identity of Person on Whose Behalf Charge was Made When Disclosing Other Case Files Involving the Same Respondent*—Section 1601.6 of the Commission's Procedural Regulations provides that the Commission shall safeguard and keep confidential the name and address of any person on whose behalf a charge is made. When disclosing information in other case files involving the same respondent, remove any material which would reveal the name or address of any person on whose behalf a charge was made including EEOC Form 151, Third Party Certification of Charge, (or any other document serving the same purpose), the affidavit required by 2.3(f) in which the person on whose behalf a charge is made acknowledges aggrievement or any other documents which contain the name or address of the person on whose behalf a charge was made. When constructing the case file, a procedure similar to that described in 83.6(b) is to be followed, i.e. clearly mark the index tabs in the case file and mark each document which contains information which the Commission is required to safeguard pursuant to section 1601.6 of the Commission's Procedural Regulations.

(4) *District Director or Chief, NPD, Decision as to Relevant or Material is final*—Because the policy of allowing access to information in other case files is discretionary on the part of the Commission the decision of the District Director or Chief, NPD, is final when made and may not be appealed. However, any District Director or Chief, NPD may reconsider on his or her own motion any decision made as to relevancy.

83.8 *Collection and Disposition of Fees for Copying*—Fees for photocopying will be assessed or waived in accordance with the schedule of fees contained at sections 1610.15 of the Commission's Regulations. Collections and disposition of fees will be in accordance with EEOC Order 471. Persons granted access to information in case files will not normally be permitted to remove case files from Commission premises except that the District Director or Chief, NPD, may allow a file to be copied

away from Commission premises if unusual circumstance warrant and proper safeguards are observed to prevent loss or mutilation of the file. District Office or National Programs Division personnel will photocopy materials on request; however, if a request for photocopying involves unusual problems of reproduction or handling, District Director or Chief, NPD may require persons requesting copies to make special arrangements. Persons granted access are to be encouraged to minimize the amount of photocopying by Commission employees by first carefully inspecting the information in the case file and making a judicious selection of the materials to be photocopied.

83.9 *Copy of this Section may be Provided to Persons who Sign EEOC Form 167*—A photocopy of this section will be provided to persons who sign an EEOC Form 167 at no cost.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(RICHMOND DIVISION)

Civil Action No. 75-0297R

ASSOCIATED DRY GOODS CORP., PLAINTIFF

v.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
DEFENDANT

MOTION TO DISMISS

The Defendant Equal Employment Opportunity Commission hereby moves the Court to dismiss the complaint in this action on the ground that the Court lacks jurisdiction over the subject matter thereof, as more fully outlined in the Defendant's memorandum of points and authorities in support of this motion.

Respectfully submitted,

ABNER W. SIBAL
General Counsel

ISSIE L. JENKINS
Associate General Counsel
Legal Counsel Division

CONSTANCE L. DUPRE
Supervisory Attorney

/s/ Anthony DeMarco
ANTHONY DEMARCO
Attorney for the Defendant
EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
2401 E Street, Northwest
Washington, D.C. 20506

LOCAL COUNSEL: Assistant U. S. Attorney
U.S. Post Office Building
10th and Main Streets
Post Office Box 1257
Richmond, Virginia 23210

ATTACHMENT A

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Civil Action No. ———

ASSOCIATED DRY GOODS CORPORATION, PLAINTIFF

vs.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
DEFENDANT

AFFIDAVIT OF RITA M. SMITH

STATE OF PENNSYLVANIA
COUNTY OF ALLEGHENY

Rita M. Smith, being duly sworn, deposes and says,

1. That she is employed as Equal Employment Specialist at the Pittsburgh District Office of the Equal Employment Opportunity Commission.

2. That in the week of March 4th, 1974 she attempted to investigate seven charges of discrimination against Joseph Horne Company, EEOC Charge Nos. TPI2-0454, TPI3-0836, TPI3-0774, TPI2-0324, TPI2-0323, TPI2-0484 and TPI2-0562. Respondent Joseph Horne Company refused to allow her to investigate and interview witnesses.

3. That on March 15th, 1974 Rita M. Smith again attempted to investigate the aforementioned EEOC charges and to examine and copy records of Respondent. Respondent again refused her access to relevant records and refused to allow her to interview witnesses whom she named. However, Respondent indicated that Ms. Smith could interview its selected witness. Ms. Smith declined this invitation.

4. That Ms. Smith sent a copy of a letter addressed to Joseph Horne Company to Louis Kushner, Charging Parties' attorney on February 25th, 1974. Ms. Smith mistakenly believed at that time that Mr. Kushner was counsel to Joseph Horne Company rather than counsel to Charging Parties.

/s/ Rita M. Smith
RITA M. SMITH

Sworn to and subscribed before me this 27th Day of July, 1975.

/s/ Louise Ann Conaly
LOUISE ANN CONALY

JACKSON, LEWIS, SCHNITZLER & KRUPMAN
Attorneys at Law
261 Madison Avenue
New York, N.Y. 10016
212-697-8200

December 8, 1975

The Honorable Robert H. Merhige, Jr., U.S.D.J.
United States District Court
Eastern District of Virginia
Post Office Building
10th & Main Streets
Richmond, Va. 23219

Re: Associated Dry Goods Corporation v. E.E.O.C.
U.S.D.C., E.D. Va., Civ. Action No. 75-297-R

Dear Judge Merhige:

We are in receipt of the E.E.O.C.'s reply memorandum in the above matter, submitted nearly a month after Associated Dry Goods Corporation (A.D.G.) filed its response to the Commission's motion to dismiss. For the most part, the arguments made in the E.E.O.C. reply memorandum are repetitive of those raised originally by the Commission in its motion; we have dealt with them in A.D.G.'s memorandum in opposition. There are few items, however, which deserve comment. We direct our remarks to them below.

I. *The Affidavit of E.E.O.C. Investigator Rita Smith*

A. In an affidavit of Equal Employment Specialist Rita M. Smith, annexed to the reply memorandum, the Commission seeks to neutralize the effect of its unauthorized and unlawful disclosures in this case. Instead, it only succeeds in focusing attention on the wrongful acts. Ms. Smith avers that she:

> ". . . sent a copy of a letter addressed to Joseph Horne Company to Louis Kushner, Charging Parties'

> attorney on February 25th, 1974. Ms. Smith mistakenly believed at that time that Mr. Kushner was counsel to Joseph Horne Company rather than counsel to Charging Parties."

Smith affidavit, at 2, par. 4. The letter referred to by Ms. Smith itself disclosed the existence of other charges against Horne's. Of still more concern, however, were the attachments to the letter: a detailed interrogatory providing the knowledgeable reader with a very good idea of the nature of the unproven charges against Horne's (Exh. B to Complaint), and copies of two of the charges against Horne's filed by individuals who had not retained Mr. Kushner as counsel.

There is another question raised—or resurrected, to be more exact,—by the Smith affidavit: How many Charging Parties does Mr. Kushner represent? In attempting to explain the transmittal of information to attorney Kushner, the Commission's District Director originally stated that Mr. Kushner represented two charging parties (Exh. E to Complaint). Later, however, he said that Mr. Kushner only represented one such person (See copy of letter attached). Now, in her affidavit, Specialist Smith refers to Mr. Kushner as the "Charging Parties' attorney" and "counsel to Charging Parties," clearly indicating plural representation, but failing to specify the number or identities of his clients.

The foregoing is cause for much concern in the context of this case. The disclosures, we stated in our memorandum, were made in apparent violation of §§ 706(b) and 709(e) of Title VII (at 3 n.2). Just as importantly, however, they reveal a laxity of administrative control by the Commission over the maintenance and dissemination of information in its possession. The evident confusion over the role of attorney Kushner, which still persists after nearly two years, shockingly confirms this view. Prudence dictates that A.D.G.'s Horne's Division not place faith in the willingness or ability of the E.E.O.C. to protect the confidentiality of its records—even where the Commission concedes confidentiality is required by statute. Its reluctance to permit a free-

wheeling, all-inclusive inquiry into Horne's practices and records by this agency, without any apparent interest in or capability for protecting Horne's interests, is not only understandable, but unavoidable.

B. Ms. Smith's affidavit also asserts that Horne's refused to allow her to investigate, interview witnesses, and examine relevant records, in connection with seven charges, in March, 1974 (at 1, pars. 2, 3). The facts are otherwise.

The principal subject of discussion at the meetings adverted to by Ms. Smith—on March 6 and March 14—involved the charge filed by Alice Corvino. With respect to this charge, alleging sex discrimination, Horne's had been sent a notice of charge by the Commission erroneously citing race or color as the basis thereof. At the March 6 meeting, Ms. Smith advised that the charge alleged sex discrimination, and immediately requested the personnel files of employees assertedly named by the charging party. When asked to first provide the specifics of the Corvino charge, Ms. Smith refused to do so. Instead she insisted upon being granted access to the files. Horne's attorney, Robert Lewis, expressed concern over the notation on the District Director's letter indicating that copies of the District Director's February 25 letter and accompanying material had been sent to attorney Kushner. He then told Ms. Smith that the Company would respond to her request for access to files at their next meeting.[1]

On March 14, Horne's made available several supervisors of Ms. Corvino, knowledgeable about her employment, for interviews by Ms. Smith. Ms. Smith declined to speak with them, and insisted that she be granted access to employment records. Attorney Lewis then advised Ms. Smith that unless she were willing to inform the Company of the relevance of the records sought to the Corvino charge, the Company would not produce them. When Mr. Lewis inquired whether Ms. Smith had any

[1] Also at the meeting, Ms. Smith advised that the Commission would pursue its investigation on another of the charges which a previous investigator had indicated was concluded.

specific questions concerning Ms. Corvino's employment, or sought specific information, investigator Smith responded again that she wanted to see all the personnel records. Mr. Lewis then expressed concern at the broad scope of the Commission's investigation, and the work entailed in collecting the information sought. Ms. Smith did not indicate that she wanted to interview witnesses of her own choice. On both March 6 and 14, Ms. Smith adverted to the likelihood of Court action in such a manner as to indicate a litigious approach to the investigation.[2] Thus, Horne's did not impede a proper investigation.

II. *The Requirements of Title VII and Disclosure*

The central issue raised by the complaint is whether the Commission may release information obtained from employer respondents to charging parties and other private persons, without regard to the nature of the information, in particular, its confidential character. Arguing that A.D.G.'s attack "strikes at the jugular of the Commission," the E.E.O.C. suggests that the Company seeks to prevent the Commission from disclosing data even to other federal, state and local governmental agencies. (E.E.O.C. reply memorandum, at 4). A.D.G. seeks no such rule. While the Privacy Act of 1974, 5 U.S.C. § 552a, addresses this problem, the immediate question in this case involves a wholesale disclosure of data in investigative files to private, adverse parties, *prior to the commencement of litigation.*[3] It does not involve, as the defendant exaggerates, publication "to the world." (E.E.O.C. reply memorandum, at 4). The disclosure contested here is abusive and unnecessary, even under

[2] These facts should be the subject of testimony in an evidentiary hearing rather than affidavits or arguments of counsel. Yet, by raising these very questions, the E.E.O.C. suggests that its own motion is inappropriate. There do exist genuine issues of material fact which require an evidentiary record.

[3] The Commission denies access to these same files to a respondent prior to commencement of suit. E.E.O.C. Compliance Manual, § 83.5(e) (Exh. L. to Complaint).

the Commission's overdramatized view that aggrieved individuals should be given assistance "to formulate their complaints and redress the David and Goliath aspect of employment discrimination where an employee stands alone against the corporate employer." (E.E.O.C. reply memorandum, at 4 n.3). Assistance short of such disclosure may be provided without jeopardizing legitimate business interests in confidentiality. In any case, the E.E.O.C.'s argument ignores the fact that before David's first stone is cast, the Commission should seek to determine through cooperative means whether discrimination exists, and if so, to correct it through conciliation. The Commission's disclosure rules are incompatible with this primary obligation. Therefore, it is not A.D.G. who is threatening to prevent the Commission from carrying out its statutory duties; rather, it is the Commission itself, by its own short-sighted and self-defeating regulations.

III. *Jurisdiction and the Decision in Sears, Roebuck & Co.*

The Commission asserts the recent decision in *Sears, Roebuck & Co.* v. *G.S.A.*, —— F. Supp. ——, 11 F.E.P. Cases 727 (D.D.C. 1975), "squarely decided" that "the Freedom of Information Act gives a plaintiff no cause of action where the government decides to disclose records but the plaintiff seeks to prevent such disclosure." (E.E.O.C. reply memorandum, at 3). This attribution is incorrect.

Sears held that where the government maintains that the F.O.I.A. requires disclosure of certain documents, a litigant may invoke the F.O.I.A. and the Declaratory Judgment Act to obtain an adjudication of the contention—a "reverse F.O.I.A." case in fact if not in name. In the instant matter, the E.E.O.C. asserts that Title VII requires the disclosure of case files as part of its statutory duties. (E.E.O.C. reply memorandum, at 2). Even under the *Sears* rationale, A.D.G. may obtain a similar adjudication under Title VII and the Administrative Procedure Act. In this context, the F.O.I.A. exemptions

are relevant "as guidelines in measuring the agency's action," [4] and their underlying policies "provide a sound basis for determining whether release of the documents in question would be 'arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.'" *Sears, Roebuck & Co.* v. *G.S.A.*, 389 F. Supp. 996, 8 F.E.P. Cases 1155, at 1158, (D.D.C. 1974). How much more arbitrary, capricious and abusive are the authorized disclosures where, as here, the agency refuses even to recognize that investigative documents may be confidential, and fails to provide any administrative mechanism for determining whether they are or not. We find the Commission's argument based on *Sears* disingenuous and unpersuasive.

IV. *Review of Agency Action*

The Commission engages in extensive discussions based on *Littel* v. *Morton*, and the *Abbott Laboratories—Toilet Goods* trilogy.[5] The import of these decisions has been treated at length in our memorandum in opposition to the motion to dismiss (at 17-21, 23-26). With respect to *Littell* v. *Morton*, *supra*, we pause here only to observe that the Commission appears to be reduced to arguing that issuance of a subpoena is not agency action. While we find this argument frivolous, it is to be noted that the E.E.O.C. fails to mention the Commission's Determination denying A.D.G.'s petition to revoke the subpoena (Exh. K to Complaint). There can be no question but that the Determination constitutes final agency action from which judicial course may be sought.

With respect to the *Abbott Laboratories—Toilet Goods Ass'n.* cases, *supra*, we believe A.D.G. has shown the necessary elements to justify the assertion of jurisdiction.

---

[4] *Id.*, at 730.

[5] *Abbott Laboratories* v. *Gardner*, 387 U.S. 136 (1967); *Toilet Goods Ass'n.* v. *Gardner*, 387 U.S. 158 (1967); *Gardner* v. *Toilet Goods Ass'n.*, 387 U.S. 167 (1967). See, E.E.O.C. reply memorandum, at 5-9.

V. *The Existence of Triable Issues*

Finally, we note the Commission's apparent uncertainty as to a most important issue raised in these proceedings. The E.E.O.C. now states: "It is *not clear* that the subpoena records are confidential as to a charging party, see *H. Kessler & Co.* v. *E.E.O.C., supra.*" (E.E.O.C. reply memoranda, at 10) (emphasis added). Dismissal of an action before trial must be based on more than debatable points of law, in an uncertain factual setting. The Commission has failed to show that A.D.G. could present no state of facts under which it would be entitled to relief under one or more of the legal bases relied upon. To the contrary it demonstrates that there exist substantial questions of fact which are properly litigated at trial. Dismissal is inappropriate in these circumstances.

For the foregoing reasons, A.D.G. again requests that the Commission's motion to dismiss be denied.

Respectfully submitted

JACKSON, LEWIS, SCHNITZLER & KRUPMAN

/s/ Roger S. Kaplan
ROGER S. KAPLAN
HUNTON, WILLIAMS, GAY & GIBSON

By: Hill B. Wellford, Jr.

RSK/ec.

cc: Anthony J. DeMarco, Esq.
David A. Schneider, Esq.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

AGREEMENT OF NONDISCLOSURE

Pursuant to Section 705g(1) of Title VII, the EEOC shall have power to cooperate with private individuals in order to accomplish the purposes of Title VII.

PERSON REQUESTING DISCLOSURE

CHARGING PARTY	RESPONDENT	AGGRIEVED PERSON ON WHOSE BEHALF CHARGE IS FILED	AGGRIEVED PERSON IN COMMISSIONER CHARGE	NAMED PARTY IN CLASS ACTION

ATTORNEY REPRESENTING

☒ CP ☐ RESPONDENT ☐ AGGRIEVED PERSON ON WHOSE BEHALF CHARGE IS FILED ☐ AGGRIEVED PERSON IN COMMISSIONER CHARGE ☐ NAMED PARTY IN CLASS ACTIO

CASE CHARGE NUMBER OF FILE(S) TO BE DISCLOSED

TPL3-0774

STATEMENT

I Samuel A. Vitaro, request disclosure of Commission case file(s) in connection with contemplated or pending litigation. I agree that the information disclosed to me will not be made public or used except in the normal course of a civil action or other proceeding instituted under Title VII involving such information.
(Typed name)

In witness whereof, this agreement is entered into as of the 10th day of March 1976 by the Equal Employment Opportunity Commission representative named below and the person requesting disclosure.

Samuel A Vitaro (412) 281-4200

Person requesting disclosure (Signature and telephone number/area code)

508 Law & Finance Bldg. Pgh. Pa. 15219

Complete address

77

PREVIOUS PAGE WAS BLANK

...t a complaint, fill in this form and ...il it to the Equal ...ployment Opportunity Commission's Regional Office in your ...In most cases, a charge must be filed with the EEOC within ...pecified time after the discriminatory act took place. IT IS ...EREFORE IMPORTANT TO FILE YOUR CHARGE AS SOON AS ...SSIBLE.

This form is to be used ... to file a charge of discrimination based on RACE, COLOR, RELIGION, SEX, or NATIONAL ORIGIN.

Case File No. 171 2 543

(PLEASE PRINT OR TYPE)

Your Name (Mr., Mrs., Miss) (Mrs. indicate) Katherine Murray Phone Number 321-4605

Street Address 62 Harlan Ave

City Pittsburgh State Pa. Zip Code 15214

WAS THE DISCRIMINATION BECAUSE OF: (Please check one)

Race or Color ☒ Religious Creed ☐ National Origin ☐ Sex ☐

Who discriminated against you? Give the name and address of the employer, labor organization, employment agency and/or apprenticeship committee. If more than one, list all.

Name Joseph Horne Co.

Street address Penn & Stanwix ST

City Pittsburgh State Pa Zip Code 15222

AND (other parties if any)

Have you filed this charge with a state or local government agency? Yes ☐ When ___ MONTH ___ DAY ___ YEAR No ☒

Discussed with Pittsburgh Commission. No signed complaint. (3/31/71)

If your charge is against a company or a union, how many employees or members? Under 25 ☐ Over 25 ☒

The most recent date on which this discrimination took place: Month October Day 21 Year 1971

Explain what unfair thing was done to you. How were other persons treated differently? (Use extra sheet if necessary.)

Dismissed so they would not have to promote me because they did not want a black person as a supervisor over a predominately white staff. A white I was employed was paid less than white persons who were less qualified.

They harassed me by providing a series of dangerous working conditions to develop without making any investigation.

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

Date November 16, 1971 Katherine E. Murray (Sign your name)

Subscribed and sworn to before me this 16th day of November 1971

Notary Public (Title)

If it is difficult for you to get a Notary Public to sign this, sign your own name and mail to the Regional Office. The Commission will help you get the form sworn to.

U.S. GOVT. PRINTING OFFICE: 1971-O-430-801

FORM [illegible]

82

CHARGE OF DISCRIMINATION

(If you have a complaint, fill in this form and mail it to the Equal Employment Opportunity Commission's Regional Office in your area. In most cases, a charge must be filed with the EEOC within a specified time after the discriminatory act took place. IT IS THEREFORE IMPORTANT TO FILE YOUR CHARGE AS SOON AS POSSIBLE.

This form is to be used only to file a charge of discrimination based on RACE, COLOR, RELIGION, SEX, or NATIONAL ORIGIN.

Case File No. TP12 0562

(PLEASE PRINT OR TYPE)

859

1 Your Name (Mr., Mrs., Miss) indicate Marlene I. Denk Phone Number 244-7362

Street Address 500 Point View Road

City Pittsburgh, State PA Zip Code 15227

2 WAS THE DISCRIMINATION BECAUSE OF: (Please check one)

Race or Color ☐ Religious Creed ☐ National Origin ☐ Sex ☒ (F)

3 Who discriminated against you? Give the name and address of the employer, labor organization, employment agency and/or apprenticeship committee. If more than one, list all.

Name Joseph Horne Company

Street address 501 Penn Avenue

City Pittsburgh State PA Zip Code

AND (other parties if any)

RECEIVED IN PITTSBURGH DISTRICT OFFICE FEB 28 1972

4 Have you filed this charge with a state or local government agency? Yes ☐ When MONTH DAY YEAR No ☒

5 If your charge is against a company or a union, how many employees or members? Under 25 ☐ Over 25 ☒

6 The most recent date on which this discrimination took place: Month 2 Day 24 Year 72 con't.

7 Explain what unfair thing was done to you. How were other persons treated differently? (Use extra sheet if necessary.)

I have been employed as a clerical employee in the Protection Office of the above-named respondent company for a period of five years. On February 24, 1972, I was informed that I would be trained as a store detective and would have to perform several difficult tasks in several different job categories. A large amount of travel and difficult hours would be involved. I feel that this action has been taken against me as a technique of harassment because of my previous contact with the Equal Employment Opportunity Commission and involvement with others that have filed charged with this Commission and that this is part of a planned action of retaliation against those in my department have dealt with the EEOC. I also feel that the company has discriminated against women as a class in the terms and conditions of employment and that these actions are in direct violation of Title VII of the Civil Rights Act of 1964.

8 I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

Date 2/28/72 Marlene I. Denk (Sign your name)

Subscribed and sworn to before me this 28 day of February 19 72

Carol Cathcart Equal Employment Opportunity Officer (Title)

If it is difficult for you to get a Notary Public to sign this, sign your own name and mail to the Regional Office. The Commission will help you to get the form sworn to.

FORM APPR BUR. OF BUDGET—No. 124-R0001 FORM EEOC-5 (REV. 7-71)

CHARGE OF DISCRIMINATION

(If you have a complaint, fill in this form and mail it to the Equal Employment Opportunity Commission's Regional Office in your area. In most cases, a charge must be filed with the EEOC within a specified time after the discriminatory act took place. IT IS THEREFORE IMPORTANT TO FILE YOUR CHARGE AS SOON AS POSSIBLE.

This form is to be used only to file a charge of discrimination based on RACE, COLOR, RELIGION, SEX, or NATIONAL ORIGIN.

Case File No. TPI2-0323

(PLEASE PRINT OR TYPE)

1 Your Name (Mr., Mrs., Miss) (indicate) Helen A. Pollock Phone Number 486-6037

Street Address 3979 Lawrence Avenue

City Allsion Park State Pennsylvania Zip Code 15101

2 WAS THE DISCRIMINATION BECAUSE OF: (Please check one)

Race or Color ☐ Religious Creed ☐ National Origin ☐ Sex ☒

3 Who discriminated against you? Give the name and address of the employer, labor organization, employment agency and/or apprenticeship committee. If more than one, list all.

Name Joseph Horne Co.

Street address 501 Penn Avenue

City Pittsburgh State Pennsylvania Zip Code 3

AND (other parties if any)

RECEIVED IN PITTSBURG DISTRICT OFFICE JAN 3 1972

4 Have you filed this charge with a state or local government agency? Yes ☐ When ____ (MONTH) ____ (DAY) ____ (YEAR) No ☒

5 If your charge is against a company or a union, how many employees or members? Under 25 ☐ Over 25 ☒

6 The most recent date on which this discrimination took place: Month January Day 3 Year 1972 cont.

7 Explain what unfair thing was done to you. How were other persons treated differently? (Use extra sheet if necessary.)

The respondent employer has in the past and continuously thereafter to date discriminated against women by promoting and/or hiring only men into supervisory positions even though the women were as equally qualified and able to perform the job as the men.

The respondent employer has in the past and continuously thereafter to date discriminated against women by paying them lower wages and benefits than men even though men and women perform substantially the same job duties.

I feel this represents discrimination against women as a class and is a direct violation of Title VII of the Civil Rights Act of 1964.

8 I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

Date 1-3-72 Helen A. Pollock (Sign your name)

Subscribed and sworn to before me this 3 day of January 19 72

Notary Public Equal Employment Opportunity Commission

If it is difficult for you to get a Notary Public to sign this, sign your own name and mail to the Regional Office. The Commission will help you to get the form sworn to.

FORM APPR BUR OF BUDGET—No. 124-R0001 FORM EEOC-5 (REV. 7-69)

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CHARGE OF DISCRIMINATION

(If you have a complaint, fill in this form and ...d it to the Equal Employment Opportunity Commission's Regional Office in your area. In most cases, a charge must be filed with the EEOC within a specified time after the discriminatory act took place. IT IS THEREFORE IMPORTANT TO FILE YOUR CHARGE AS SOON AS POSSIBLE.

This form is to be used ... to file a charge of discrimination based on RACE, COLOR, RELIGION, SEX, or NATIONAL ORICIN.

Case File No. TP12 0484

(PLEASE PRINT OR TYPE)

1 Your Name (Mr., Mrs., Miss indicate) Mary Kritko Phone Number 461-5864

Street Address 423 9th Avenue

City Munhall State Pa. Zip Code 15120

2 WAS THE DISCRIMINATION BECAUSE OF: (Please check one)

Race or Color ☐ Religious Creed ☐ National Origin ☐ Sex ☒

3 Who discriminated against you? Give the name and address of the employer, labor organization, employment agency and/or apprenticeship committee. If more than one, list all.

Name Joseph Horne Co.

Street address 501 Penn. Avenue

City Pittsburgh State Pa. Zip Code

AND (other parties if any)

RECEIVED JAN 19 1972

4 Have you filed this charge with a state or local government agency? Yes ☐ When MONTH DAY YEAR No ☒

5 If your charge is against a company or a union, how many employees or members? Under 25 ☐ Over 25 ☒

6 The most recent date on which this discrimination took place: Month January Day 17 Year 72

7 Explain what unfair thing was done to you. How were other persons treated differently? (Use extra sheet if necessary.)

On July 23, 1969 I sustained an on-the-job injury while working for the above-mentioned respondent. I was not adequately compensated financially and was not given fair treatment during the resulting hearing and adjustment period. Because of the respondents disparate treatment of myself I have lost wages and benefits for a continuing period of time.

Also, the respondent employer has in the past and continuously thereafter to date discriminated against women as a class by not promoting them into supervisory positions and paying them lower wages than men for substantially the same work.

I feel this discrimination against women as a class is in direct violation of Title VII of the Civil Rights Act of 1964.

8 I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

Date 1/17/72 Mary Kritko (Sign your name)

Subscribed and sworn to before me this 17 day of January 19 72

(Name) Equal Employment Officer (Title)

... sign your own name and mail to the Regional Office. The Com... S...

to ... THIS SECTION.

FORM APP.: BUR. OF BUDGET—No. 124-R0001 FORM EEOC-5 (REV. 7-...)

18

CHARGE OF DISCRIM.. ATION	EEOC CHARGE NO. 1P73-0836	FORM APPROVED OMB NO. 124-R0001

INSTRUCTIONS

If you have a complaint, fill in this form and mail it to the Equal Employment Opportunity Commission's District Office in your area. In most cases, a charge must be filed with the EEOC within a specified time after the discriminatory act took place. IT IS THEREFORE IMPORTANT TO FILE YOUR CHARGE AS SOON AS POSSIBLE. *(Attach extra sheets of paper if necessary.)*

CAUSE OF DISCRIMINATION

- ☐ RACE OR COLOR
- ☒ SEX
- ☐ RELIGIOUS CREED
- ☐ NATIONAL ORIGIN

NAME *(Indicate Mr. or Ms.)*	DATE OF BIRTH
Ms, Marsue Dingley	8-28-47
STREET ADDRESS: 903 Chestnut Avenue — COUNTY: Allegheny	SOCIAL SECURITY NO.: 186-40-1151
CITY, STATE, AND ZIP CODE: Pittsburgh, PA 15234	TELEPHONE NO. *(Include area code)*: 343-0517

THE FOLLOWING PERSON ALWAYS KNOWS WHERE TO CONTACT ME

NAME *(Indicate Mr. or Ms.)*	TELEPHONE NO. *(Include area code)*
Mrs. Dingley	343-0517
STREET ADDRESS: 903 Chestnut Avenue	CITY, STATE, AND ZIP CODE: Pittsburgh, PA 15234

LIST THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT WHO DISCRIMINATED AGAINST YOU *(If more than one, list all)*

NAME	TELEPHONE NO. *(Include area code)*
Joseph Hornes Company	261-3000 x 884
STREET ADDRESS: Stanwix Street	CITY, STATE, AND ZIP CODE: Pittsburgh, PA 15222

OTHERS WHO DISCRIMINATED AGAINST YOU *(If any)*:

CHARGE FILED WITH STATE/LOCAL GOV'T. AGENCY	DATE FILED	AGENCY CHARGE FILED WITH *(Name and address)*
☐ YES ☒ NO		

APPROXIMATE NO. OF EMPLOYEES/MEMBERS OF COMPANY OR UNION THIS CHARGE IS FILED AGAINST	DATE MOST RECENT OR CONTINUING DISCRIMINATION TOOK PLACE *(Month, day, and year)*
over 25	June 5, 1973

Explain what unfair thing was done to you and how other persons were treated differently. Understanding that this statement is for the use of the United States Equal Employment Opportunity Commission, I hereby certify:

I have been discriminated against by the above named respondent employer because of my sex, Female, in promotion, reprisal due to prior contact with Equal Employment Opportunity Commission, and general terms and conditions of employment which is in direct violation of Section 704 of Title VII of the Civil Rights Act of 1964, as amended.

DISTRICT OFFICE
6 PM 2 24

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

DATE	CHARGING PARTY *(Signature)*
6/6/73	[signature]

Subscribed and sworn to before this EEOC representative:

DATE	SIGNATURE AND TITLE
6/6/73	Equal Employment Officer

NOTARY PUBLIC

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE *(Day, month, and year)*

SIGNATURE *(If it is difficult for you to get a Notary Public to act in this, sign your own name and mail to the District Office. The Commission will notarize the charge for you at a later date.)*

CHARGE OF DISCRIMINATION

EEOC CHARGE NO. TPI 3- 0774

FORM APPROVED OMB NO. 124-R0001

INSTRUCTIONS

If you have a complaint, fill in this form and mail it to the Equal Employment Opportunity Commission's District Office in your area. In most cases, a charge must be filed with the EEOC within a specified time after the discriminatory act took place. IT IS THEREFORE IMPORTANT TO FILE YOUR CHARGE AS SOON AS POSSIBLE. *(Attach extra sheets of paper if necessary.)*

CAUSE OF DISCRIMINATION

- ☐ RACE OR COLOR
- ☒ SEX
- ☐ RELIGIOUS CREED
- ☐ NATIONAL ORIGIN

NAME *(Indicate Mr. or Ms.)*
Alice M. Corvino

DATE OF BIRTH
~~8/3/28~~ 2/8/44

STREET ADDRESS
436 Millers Lane

COUNTY

SOCIAL SECURITY NO.
195-34-0772

CITY, STATE, AND ZIP CODE
Pittsburgh

TELEPHONE NO. *(Include area code)*
793-1478

THE FOLLOWING PERSON ALWAYS KNOWS WHERE TO CONTACT ME

NAME *(Indicate Mr. or Ms.)*
The above is permanent

TELEPHONE NO. *(Include area code)*

STREET ADDRESS

CITY, STATE, AND ZIP CODE

LIST THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT WHO DISCRIMINATED AGAINST YOU *(If more than one, list all)*

NAME
Joseph Horne Company

TELEPHONE NO. *(Include area code)*

STREET ADDRESS
Downtown location - Penn Avenue

CITY, STATE, AND ZIP CODE
Pittsburgh, Pa.

OTHERS WHO DISCRIMINATED AGAINST YOU *(If any)*

CHARGE FILED WITH STATE/LOCAL GOV'T. AGENCY
☒ YES ☐ NO

DATE FILED

AGENCY CHARGE FILED WITH *(Name and address)*

APPROXIMATE NO. OF EMPLOYEES/MEMBERS OF COMPANY OR UNION THIS CHARGE IS FILED AGAINST

DATE MOST RECENT OR CONTINUING DISCRIMINATION TOOK PLACE *(Month, day, and year)*
Continuous

Explain what unfair thing was done to you and how other persons were treated differently. Understanding that this statement is for the use of the United States Equal Employment Opportunity Commission, I hereby certify:

The Joseph Horne Company discriminated against my female sex through promotions and wages. I believe the company continuously discriminates against females with respect to promotions and wages. Because of these conditions, I terminated my employment with the Joseph Horne Company. Though I was employed with them for 10 years, I was not able to rise above the position of staff assistant.

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

DATE
8/13/73

CHARGING PARTY *(Signature)*
Alice M. Corvino

Subscribed and sworn to before this EEOC representative.

DATE
8/13/74

Equal Employment Specialist

NOTARY PUBLIC

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE *(Day, month, and year)*

SIGNATURE *(If it is difficult for you to get a Notary Public to act this, sign your own name and mail to the District Office. The Commission will notarize the charge for you at a later date.)*

EEOC FORM 5 (Rev. 12-72) Previous editions of this form may be used.

GPO 862-415

CHARGE OF DISCRIMINATION

(If you have a complaint, fill in this form and mail it to the Equal Employment Opportunity Commission's Regional Office in your area. In most cases, a charge must be filed with the EEOC within a specified time after the discriminatory act took place. IT IS THEREFORE IMPORTANT TO FILE YOUR CHARGE AS SOON AS POSSIBLE.

This form is to be used only to file a charge of discrimination based on RACE, COLOR, RELIGION, SEX, or NATIONAL ORIGIN.

Case File No. TPI2-0324

(PLEASE PRINT OR TYPE)

1 Your Name (Mr., Mrs., Miss, indicate) Lois Blake Phone Number ~~331-2336~~ 421-7512

Street Address 1225 Adon Street

City Pittsburgh State PA Zip Code 15204

2 WAS THE DISCRIMINATION BECAUSE OF: (Please check one)

Race or Color ☐ Religious Creed ☐ National Origin ☐ Sex ☒ ~~x~~-Female

3 Who discriminated against you? Give the name and address of the employer, labor organization, employment agency and/or apprenticeship committee. If more than one, list all.

Name Joseph Horne Company

Street address 501 Penn Avenue

City Pittsburgh State PA Zip Code 15222

AND (other parties if any)

4 Have you filed this charge with a state or local government agency? Yes ☐ When ____ MONTH ____ DAY ____ YEAR No ☒

5 If your charge is against a company or a union, how many employees or members? Under 25 ☐ Over 25 ☒

6 The most recent date on which this discrimination took place: Month 2 Day 14 Year 72

7 Explain what unfair thing was done to you. How were other persons treated differently? (Use extra sheet if necessary.)

Since September 15, 1969, I have been employed as a Store Detective in Department 530-10 of the above-named respondent company. I had long been aware of disparate treatment of females by the company in regards to wage rates, promotions, and other terms and conditions of employment. About the latter part of December 1971, I contacted the Pittsburgh District Office of the E.E.O.C. three times by telephone and two times by personal visit and discussed the employment situation at the respondent company. My supervisor the Head of Security, was subsequently made aware of my activities. On February 14, 1972, I was discharged by the company for allegedly making a false arrest. The arrest was not without probable cause and other employees committing the same act were not discharged.

I strongly believe my discharge was a retaliation against my contact with the E.E.O.C. and that this action, as well as the company's discrimination against women as a class, in terms of employment is in direction violation of Title VII of the Civil Rights Act of 1964.

8 I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

Date February 15 1972 Lois E. Blake (Sign your name)

Subscribed and sworn to before me this 15th day of February 1972

Carol J. Bok Equal Employment Opportunity Officer (Title)

If it is difficult for you to get a Notary Public to sign this, sign your own name and mail to the Regional Office. The Commission will help you to get the form sworn to.

FORM APPR. BUR. OF BUDGET—No. 124-R0001 FORM EEOC-5 (REV. 7-68)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

Civil Action No. 75-297-R

ASSOCIATED DRY GOODS CORPORATION, PLAINTIFF

v.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
DEFENDANT

ORDER

For the reasons referred to in the Memorandum of the Court, this day filed, and deeming it proper so to do, it is ADJUDGED and ORDERED that the defendant's motion to dismiss be, and the same is hereby, denied in part and sustained in part, as referred to in said Memorandum.

Let the Clerk send a copy of this Order to all counsel of record.

/s/ Robert A. Merhige
ROBERT A. MERHIGE
United States District Judge

Date: JUNE 25, 1976

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

Civil Action No. 76-0297-R

ASSOCIATED DRY GOODS CORPORATION, PLAINTIFF

v.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (E.E.O.C.), and ETHEL B. WALSH, individually and as "Acting Chairman," and permanent Vice Chairman of the E.E.O.C., DANIEL E. LEACH, individually and as Member of the E.E.O.C., COLSTON A. LEWIS, individually and as Member of the E.E.O.C., RAYMOND L. TELLES, individually and as Member of the E.E.O.C., ALVIN L. GOLUB, individually and as Acting Executive Director of the E.E.O.C., ABNER W. SIBAL, individually and as General Counsel of the E.E.O.C., EDUARDO PENA, JR., individually and as Director of Compliance of the E.E.O.C., and EUGENE V. NELSON, individually and as District Director, Pittsburgh, Pennsylvania, District Office, of the E.E.O.C., DEFENDANTS

ANSWER

Ethel Bent Walsh, Acting Chairman of the defendant Equal Employment Opportunity Commission and permanent Vice Chairman, on behalf of the Commission and herself in her official capacity, and individually, and each of the other defendants, each in their official capacity and individually, for their answer to the complaint, respectfully allege:

1. Defendants admit each and every allegation of Paragraph 1 of the Complaint.

2. Defendants deny each and every allegation of Paragraph 2 of the Complaint.

3. Defendants deny each and every allegation of Paragraph 3 of the Complaint. The Complaint does not set forth any facts to warrant the conclusion that there

is such an amount ($10,000) involved, and Defendant denies the jurisdiction of the Court in this case.

4. and 5. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 4 and 5 of the Complaint.

6. Defendants deny each and every allegation of Paragraph 6 of the Complaint except that Defendants admit that the Commission is an agency of the Federal Government created under § 705 of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-4.

6(a) Defendants admit each and every allegation of Paragraph 6(a) of the Complaint.

6(b) Defendants admit that the Commission has its principal offices in the City of Washington, District of Columbia. Defendants deny that the Commission's principal place of business is in the City of Washington, District of Columbia. The defendant Commission has offices in 32 cities spread throughout the continental limits of the United States. For a listing see 29 C.F.R. § 1610.4(c).

6-1(a)(b) and (c) Defendants admit each and every allegation of paragraph 6-1(a), (b), and (c) of the Complaint except that Alvin L. Golub is not the Acting Executive Director but the Deputy Executive Director.

6-1(d). Defendants deny the allegations of paragraph 6-1(d) of the Complaint.

7. Defendants deny that Alice M. Corvino filed a sex discrimination charge against Horne's on July 25, 1973. Defendants otherwise admit each and every allegation of Paragraph 7 of the Complaint.

8. Defendants admit each and every allegation of Paragraph 8 of the Complaint except that Defendants deny that Alice M. Corvino filed her charge on July 25, 1973.

9. Defendants admit each and every allegation of Paragraph 9 of the Complaint.

10. Defendants admit each and every allegation of Paragraph 10 of the Complaint.

11. Defendants deny each and every allegation of the first sentence of Paragraph 11 of the Complaint. The

attorney, Louis B. Kushner, represented, on February 25, 1974, the seven charging parties whose cases were being investigated by the Defendant Commission. The February 25, 1974, letter described in the Complaint was inadvertently sent to Mr. Kushner. With regard to the second and third sentences of Paragraph 11 of the Complaint, the Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

12. The Defendants deny each and every allegation of Paragraph 12 of the Complaint except that the Defendant Commission admits that it attempted to conduct an investigation of Joseph Horne Company during the week of March 4, 1974, and that the agents for Joseph Horne Company refused to allow the investigation to proceed and refused to allow witnesses to be interviewed.

13. and 14. Defendants admit each and every allegation of Paragraphs 13 and 14 of the Complaint.

15. Defendants deny each and every allegation of Paragraph 15 of the Complaint except that Defendant Commission admits that its Pittsburgh District Director sent a letter to Robert Lewis, Esquire dated May 3, 1974.

16. Defendants admit each and every allegation of the first sentence of Paragraph 16 of the Complaint. Defendants deny each and every allegation of the second sentence of Paragraph 16 of the Complaint.

17. Defendants admit each and every allegation of Paragraph 17 of the Complaint.

18. Defendant Commission admits that its Associate General Counsel sent a letter to Robert Lewis, Esquire, dated July 12, 1974, and that such letter appears at Exhibit H of the Complaint. Defendants deny each and every other allegation of Paragraph 18 of the Complaint.

19. and 20. Defendants admit each and every allegation of Paragraphs 19 and 20 of the Complaint.

21. Defendants admit each and every allegation of the first and third sentences of Paragraph 21 of the Complaint. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the second sentence of Paragraph 21 of the Complaint.

22. and 23. Defendants deny each and every allegation of Paragraphs 22 and 23 of the Complaint.

24. See previous answers 1-23.

25. Defendants admit that the Commission has a regulation numbered 1601.20, found at 29 C.F.R. § 1601.20. Defendants deny that Plaintiff has accurately set forth such regulation at Paragraph 25 of the Complaint.

26(a). Defendant Commission admits that it promulgated its regulation § 1610.17(d) in the Federal Register. It is codified at 29 C.F.R. § 1610.17(d). Defendants deny each and every other allegation of Paragraph 26(a) of the Complaint.

26(b). Defendants admit each and every allegation of Paragraph 26(b) of the Complaint.

27. Defendants deny each and every allegation of Paragraph 27 of the Complaint.

28. Defendants admit each and every allegation of Paragraph 28 of the Complaint.

29. and 30. Defendants deny each and every allegation of Paragraphs 29 and 30 of the Complaint.

31. See answers to Paragraphs 1-27.

32, 33, 34, and 35. Defendants deny each and every allegation of Paragraphs 32, 33, 34 and 35 of the Complaint.

36. See answers to Paragraphs 1-26.

37. Defendants deny each and every allegation of Paragraph 37 of the Complaint.

38. See answers to Paragraphs 1-26.

39. Defendants deny each and every allegation of Paragraph 39 of the Complaint.

40. See answers to Paragraphs 1-26 of the Complaint.

41. and 42. Defendants deny each and every allegation of Paragraphs 41 and 42 of the Complaint.

43. See answers to Paragraphs 1-26 of the Complaint.

44, 45, 46, 47, 48, and 49. Defendants deny each and every allegation of Paragraphs 44, 45, 46, 47, 48, and 49 of the Complaint.

WHEREFORE, Defendants pray that this Court deny the relief requested by Plaintiff.

Respectfully submitted,

ABNER W. SIBAL
General Counsel
CONSTANCE L. DUPRE
Associate General Counsel
Legal Counsel Division

/s/ Anthony J. De Marco
ANTHONY J. DE MARCO
Attorney for Defendants

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
2401 E Street, N.W.
Washington, D.C. 20506
(202) 634-6460

Assistant United States Attorney
U.S. Post Office Bldg.
P.O. Box 1257
Richmond, Virginia 23210

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Answer has been forwarded to plaintiff's Counsel by first class mail, postage prepaid at the following addresses:

Roger S. Kaplan, Esq.
Jackson, Lewis, Schnitzler & Krupman
251 Madison Avenue
New York, New York 10016

Hill B. Wellford, Esq.
Hunton and Williams
P.O. Box 1535
Richmond, Virginia 23210

/s/ Anthony J. De Marco
ANTHONY J. DE MARCO
Attorney for the Defendants

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
2401 E Street, N.W.
Washington, D.C. 20506
(202) 634-6460

Date: September 22, 1976

IN THE
UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF PENNSYLVANIA

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
APPLICANT

vs.

JOSEPH HORNE COMPANY, a division of
Associated Dry Goods Corporation, RESPONDENT

ORDER

AND NOW, this 28th day of September, 1976, for the reasons stated in the foregoing Memorandum,

IT IS ORDERED that the respondent's motion to transfer the above-captioned action to the United States District Court for the Eastern District of Virginia, Richmond Division, be and the same is hereby granted, and that the respondent's motion to grant costs and attorney's fees be and the same is hereby denied, each party to bear its own costs of the proceedings in this court.

/s/ [Illegible]
C.D.J.

cc Counsel of Record

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

Civil Action No. 75-029-R

ASSOCIATED DRY GOODS CORPORATION, PLAINTIFF

—*v.*—

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, ET AL., DEFENDANTS

PLAINTIFF'S INTERROGATORIES TO DEFENDANTS

TO: Anthony J. DeMarco, Esq.
Counsel's Office
Equal Employment Opportunity Commission
2401 E Street, N.W.
Washington, D.C. 20506

PLEASE TAKE NOTICE that pursuant to F.R. CIV. P. Rule 33 Defendants are hereby requested to serve upon Plaintiff's attorneys, Jackson, Lewis, Schnitzler & Krupman, by Roger S. Kaplan, and Hunton & Williams, by Hill B. Wellford, Jr., at their offices located at 261 Madison Avenue, New York, New York 10016, and 707 East Main Street, Richmond, Virginia 23212, respectively, answers in writing, separately and under oath, to the following interrogatories, on or before January 12, 1977.

In answering these interrogatories, furnish all information available to you, including information in the possession of your attorneys, or their investigators, and all persons acting in your behalf and not merely such information known of your own personal knowledge. If you cannot answer the interrogatories in full after exercising due diligence to secure the information, so state and answer to the extent possible, specifying your inability to answer the remainder and stating whatever

information or knowledge you have concerning the unanswered portions.

The interrogatories which follow are to be considered as continuing, and you are requested to provide, by way of supplementary answers thereto, such additional information as you or any other persons acting on your behalf may hereafter obtain which will augment or otherwise modify your answers now given to the interrogatories below. Such supplementary responses are to be filed and served upon Defendant within thirty (30) days after receipt of such information.

As used herein, the following terms shall have the meanings indicated below:

a. "Person" means natural persons, corporations, partnerships, sole proprietorships, unions, associations, federations, or any other kind of entity.

b. "Document" means any printed, typewritten, handwritten, or otherwise recorded matter of whatever character, including, but without limitation, letters, purchase orders, memoranda, telegrams, notes, catalogues, brochures, diaries, reports, calendars, inter-office communications, statements, announcements, photographs, tape recordings, motion pictures and any carbon or photographic copies of any such material if Plaintiff does not have custody or control of the original. If any document requested to be produced was but is no longer in Plaintiff's possession or control or is no longer in existence, state whether it is: (a) missing or lost, (b) destroyed, (c) transferred voluntarily or involuntarily to others and if so, to whom, or (d) otherwise disposed of; and in each instance explain the circumstances surrounding and authorization for such disposition thereof and state the approximate date thereof.

In each question wherein you are asked to "identify" a person, state with respect to such persons: (a) his name, (b) his last known home address and telephone number, (c) his business address and telephone number, (d) the name and address of his employer, and (e) his relationship to you.

As used herein, EEOC or Commission refers to the Defendant Equal Employment Opportunity Commission,

and its members, officers, agents, representatives or employees, including the individual named defendants, as indicated from the context of the interrogatory.

1. Identify all persons who have filed charges with the Pittsburgh District Office of the EEOC against the Joseph Horne Company division of Plaintiff since , 1972. For each person so identified, state:

a. The date on which that person's charge was filed.

b. The EEOC Case Number assigned to that person's charge.

c. The nature of the employment discrimination alleged in that person's charge (e.g., sex, race, national origin, etc.).

2. For each charge identified in answer to Interrogatory No. 1, state whether a case file was prepared by the EEOC pertaining to an investigation thereof.

3. For each file listed in response to Interrogatory No. 2, state the name, address, and official title of the EEOC member, officer, employee or agent having custody or control over such file.

4. For each file listed in response to Interrogatory No. 2, state:

a. Whether the file was examined at any time by any person or persons, other than a member, officer, or employee of the EEOC.

b. The identity of such person or persons, including the relationship of such person or persons to any charging party and any organizational, professional or business affiliation of person or persons.

c. The date(s) on which such examination occurred.

d. The purpose(s) asserted by the person or persons for conducting the examination(s).

e. The identity of the EEOC member, officer, or employee to whom this purpose or purposes was or were communicated, the date thereof, and

whether such communication was oral or in writing.

f. Whether the EEOC member, officer, or employee requested proof of the genuineness of the purpose or purposes asserted prior to permitting such examination, and of the person's relationship to the charging party whose file was sought to be examined.

g. Whether the person seeking to examine such file provided proof as aforesaid, and if so, a description of its nature, and whether it was oral or in writing.

h. The identity of each and every document contained in the file, and whether a table of contents exists for such file.

i. Whether each person identified in response to paragraph "b" above executed an "agreement of non-disclosure," on a form provided therefore, prior to examining a file.

(1) If not, identify the person or persons involved and the file which was examined.

(2) State the reason why an examination of the file was permitted without prior execution of the agreement.

5. Identify each file, or portion thereof (naming individual documents), listed in response to Interrogatory 4, which has been reproduced by holography, or xerography or similar means, at the request of any person other than an EEOC member, officer or employee.

a. State the date on which such reproduction was made.

b. Identify the person at whose request the reproduction was made.

c. State whether the copies made were provided to person requesting them.

6. State whether any of the files listed in response to Interrogatory No. 4 has ever been removed from the Pittsburgh District Office of the EEOC by, or at the request of a person other than a Commission member, officer or employee. If so:

a. Identify each file thus removed, and the date the removal occurred.

b. Identify the person
(1) who removed the file, and,
(2) requested such removal

c. State whether any documents were taken out of the file prior to such removal, and if so, identify them.

7. State whether the Pittsburgh District Office maintains or has maintained "EEO-1" reports, or copies thereof, filed by the Joseph Horne Company division of Plaintiff. If so:

a. State the years for which such reports are or have been maintained.

b. State whether any person has examined such reports.

c. If so:

(1) Identify the year of the report examined, and

(2) Identify the person who examined it.

8. State whether the EEOC has ever offered to transmit case file information to any person outside the agency, rather than solely in response to an express request therefor by such persons. If so:

a. Identify the persons to whom the offer was made.

b. Identify the person making the offer.

c. State the date on which the offer was made.

d. Identify the case and information so transmitted.

9. State whether the Pittsburgh District Office of the EEOC maintains a log or register for persons who examine offered files. If so:

a. Identify the District Office officer or employee responsible for maintaining this document.

b. State what information is recorded in this document.

c. The exact nature of the entries which relate to the files identified in Interrogatories Nos. 1-7.

10. State whether the Pittsburgh District Office of the EEOC at any time provided assistance to any persons presently involved in litigation against the Joseph Horne Company alleging violations of Title VII of the Civil Rights Act of 1964, as amended, by the division of Plaintiff. If so:

a. Identify the persons to whom assistance was provided (including the person's or persons' attorneys, where applicable).

b. Describe in detail the nature of the assistance provided.

c. Unless covered in answer to paragraph "b" above, state specifically whether such assistance included:

(1) Engaging in legal research

(2) Providing copies of pleadings or papers from other litigation

(3) Drafting pleadings, motions, interrogatories, or other discovery requests.

(4) Drafting briefs.

d. Identify the EEOC members, officers or employees who provided such assistance.

e. State, in each case the date or dates on which such assistance was provided.

Yours, etc.,

JACKSON, LEWIS, SCHNITZLER
& KRUPMAN
261 Madison Avenue
New York, N.Y. 10016
(212) 697-8200

By _____
ROGER S. KAPLAN
ROBERT LEWIS

HUNTON & WILLIAMS
707 East Main Street
Richmond, Virginia 23212
(804) 788-8200

By _____
HILL B. WELLFORD, JR.
Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

Civil Action No. 75-029-R

ASSOCIATED DRY GOODS CORPORATION, PLAINTIFF

v.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, ET AL., DEFENDANTS

DEFENDANT'S ANSWERS TO PLAINTIFF'S INTERROGATORIES

1. Following is a list of all persons who have filed charges with the Pittsburgh District Office, Equal Employment Opportunity Commission, against the Joseph Horne Company, November 16th, 1971 to present. The EEOC Charge No., date of receipt of charge and nature of employment discrimination alleged is indicated.

   (1) Local 86, Amalgamated Clothing Workers—TPI4-0478—December 2, 1973—sex.

   (2) John Novak—034-50563-2—December 10, 1974—national origin—file destroyed—October 22, 1975.

   (3) Jean Paslowski—TPI2-0512—February 9, 1972—file destroyed—August 5, 1975.

   (4) Service Employees International Union Local 29—034-60952-2—February 13, 1976—race—Black.

   (5) Ronald Sudduth—034-50468-6—November 7, 1974—race—Black.

   (6) Joyce Gray—034-50862-2—March 25, 1975—race and sex.

(7) Demetre Geronymo—TPI3-0137—September 1, 1972—national origin.

(8) Philip R. Williams—TPI2-0555—December 4, 1974—race—Black.

(9) Mary Kritko—034-60078-3—July 24, 1975—sex and Section 704a Retaliation.

(10) Alice Corvino—TPI3-0774—May 2, 1973—sex.

(11) Marsue Dingley—TPI3-0836—June 6, 1973—sex.

(12) Katherine Murray—TPI2-0454—November 16, 1971—race—Black.

(13) Lois Blake—TPI2-0324—February 15, 1972—sex.

(14) Mary Kritko—TPI2-0484—January 17, 1972—sex.

(15) Marlene Denk—TPI2-0562—February 28, 1972—sex.

(16) Helen Pollock—TPI2-0323—January 3, 1972—sex.

(17) Mary C. Smith—034-50753-7—February 18, 1975—Section 704a Retaliation.

(18) Mary C. Smith—TPI2-0984—June 29, 1972—sex.

(19) Howard E. Watts, Jr.—TPI3-0007—July 11, 1972—sex and Section 704a Retaliation.

(20) Carol R. DiMaio—TPI2-0983—July 15, 1972—sex and Section 704a Retaliation.

2. Case files have been either completely or partially prepared for all charges identified in answer to interrogatory No. 1. Two of those files have been destroyed, as indicated, pursuant to Commission policy regarding disposal of files which have been administratively closed.

3. Each file listed above which is in existance is in the custody of Eugene V. Nelson, District Director, 2038A Federal Building, Pittsburgh, Pennsylvania 15222.

4. The use of EEOC Form 167, "Agreement of Non-Disclosure", was put into effect by the Pittsburgh District Office in June 1975 subsequent to receipt of that form in the Pittsburgh office from Headquarters. Prior to June of 1975 Charging Party counsel and Respondent counsel were given access to their client's files without signing such agreements. The following consists of answers to interrogatories 4(a) through 4(g):

   (1) TPI4-0478—File has not been examined.

   (2) 034-50563—File has not been examined.

   (3) TPI2-0512—File has not been examined.

   (4) 034-60952-2—File has not been examined.

   (5) 034-50468-6—File has not been examined.

   (6) 034-50862-2—File has not been examined.

   (7) TPI3-0137—File was examined on April 8th, 1975 by James R. Williams, Esq., Jackson, Lewis, Schnitzler and Krupman. File was also examined by Robert Lewis, Esq., Jackson, Lewis, Schnitzler and Krupman on March 25th, 1975. Copies from the file were reproduced and mailed to Mr. Williams on April 5th, May 22nd, and May 28th, 1975. Copies of relevant documents from file were also mailed to Charging Party counsel George Retos, Jr. pursuant to written request of December 4th, 1974. This written request also requested Notice of Right to Sue which was issued on December 6th, 1974. Mr. Retos stated in his letter of December 4th that he had been retained by Mr. Demetre Geronymo to commence action against Respondents named in the charge.

   (8) TPI5-0555—File has not been examined.

   (9) 034-60078-3—File has not been examined.

(10) TPI3-0774—File was examined on July 8th, 1976 by Diane Kathleen Rembelshe, Jackson, Lewis, Schnitzler and Krupman. Copies from the file were mailed to Roger S. Kaplan, Jackson, Lewis, Schnitzler and Krupman on September 1st, 1976 pursuant to written request of July 14th, 1976 under the Freedom of Information Act. File was examined by Samuel A. Vitaro, Esq., Charging Party attorney, on March 10th, 1976. Mr. Vitaro asserted that he was Charging Party attorney and completed EEOC Form 167, agreement of Non-Disclosure. Copies from the file were Xeroxed and sent to Mr. Vitaro.

(11) TPI3-0836

(13) TPI2-0324

(14) TPI2-0484

(15) TPI2-0562

(16) TPI2-0323

These files (11, 13, 14, 15, 16) were examined prior to June 1975 by Robert Lewis, Esq. and Victor Schachter, Esq., Jackson, Lewis, Schnitzler and Krupman. Copies from the files were mailed to Roger S. Kaplan, Jackson, Lewis, Schnitzler and Krupman on September 1st, 1976 pursuant to written request of July 14th, 1976 under the Freedom of Information Act. Copies from the Blake file (TPI2-0324) were mailed to Victor Schachter, Esq., on April 9th, 1975. These files were also examined by Samuel Vitaro, Esq., approximately the date he examined the Corvino (TPI3-0774) file. Mr. Vitaro indicated that these Charging Parties (other than Corvino) were referred to him by their former counsel, Louis Kushner, Esq. Copies of charges and affidavits of Pollock, Denk, Blake and Kritko (TPI2-0484) as well as seniority list of company security depart-

ment from the Kritko (TPI2-0484) file were Xeroxed and sent to Mr. Vitaro.

(12) TPI2-0454 (Murray)—File was examined prior to June 1975 by Robert Lewis, Esq., Jackson, Lewis, Schnitzler and Krupman.

(17) 034-50753-7—File has not been examined.

(18) TPI2-0984

(19) TPI3-0007

(20) TPI2-0983

These files were examined by Joel Finger, Esq., Jackson, Lewis, Schnitzler and Krupman on August 14th, 1975. He executed an EEOC Form 167. Requested copies from these files were mailed to Mr. Finger on August 21st, 1975. These files were also examined by Edward B. Friedman, Esq., Friedman and Friedman, counsel to Charging Parties, in May 1975. Notices of Right to Sue were issued to Charging Parties upon Mr. Friedman's request on June 5th, 1975. Copies of requested documents from these files were sent to Mr. Friedman on approximately this date. Copies of the Requests for Notice of Right to Sue regarding these charges from Edward B. Friedman and copies of the Smith, Watts and DiMaio charges were sent to Robert Lewis, Esq., Jackson, Lewis, Schnitzler and Krupman on July 2nd, 1975 in response to his request for copies of these documents.

h. As to those files for which Notices of Right to Sue have been issued, the files have already been examined by Plaintiff's counsel as indicated above. As to all other files Section 83 Commission Compliance Manual prohibits disclosure of these files. See also 5 U.S.C. Section 552(b)(7), law enforcement exception to Freedom of Information Act.

i. See answers to 4(a) through 4(g) above.

5. See responses to No. 4 above. Additionally, it is Commission policy to disclose to the charging party,

under § 83 of the Compliance Manual, all information in the case file except:

a) inter or intra-agency memoranda, if any;

b) conciliation materials, if any;

c) affirmative action plans from OFCCP, if any;

d) statements of confidential witnesses (such as aggrieved persons on whose behalf third persons filed charges), if any;

e) data involving other respondents, if any.

Respondent counsel, after a Title VII suit has been filed, may see the same information disclosed to charging party. Prior to implementation of § 83, charging party was not allowed to view copies of EEO-1 reports prior to institution of litigation. Except in unusual circumstances (such as when a party requests in writing that certain file be photo copied) no records are kept as to documents photo-copied.

6. Those files have not been removed from the Pittsburgh District Office by or at the request of a person other than a Commission member, officer or employee.

7. The Pittsburgh District Office maintains EEO-1 Reports filed by the Joseph Horne Company.

   a. 1970, 1971, 1972, 1973, 1974.

   b. Yes

   c. (1 and 2)—It is known that the 1974 EEO-1 Report was examined by Samuel Vitaro, Esq., and it is known that the 1970 and 1971 EEO-1 Reports were examined by Edward B. Friedman, Esq. Furthermore it is possible that those counsel have also examined EEO-1 Reports of other years.

8. No.

9. None is maintained.

10. (a, b & c)—Assistance was provided Friedman and Friedman, counsel to Watts, Smith and DiMaio in response to requests for copies of model pleadings,

complaints and interrogatories, which were provided to them. Furthermore source material was recommended to Friedman and Friedman regarding Title VII litigation. On a number of occasions this office has responded to requests for information from Friedman and Friedman concerning recent Title VII decisions. In response to questions on two or three occasions a very small amount of legal research may have been done consisting of finding and making copies of relevant decisions.

Model complaint was sent to George Retos, counsel to Demetre Geronymo, TPI3-0137. On a few occasions certain questions regarding Title VII case law have been answered in response to requests from Mr. Retos and Mr. Vitaro.

At no time were pleadings or briefs drafted by a member of the Pittsburgh District Office staff.

d. James S. Bukes, District Counsel.

e. It is impossible to ascertain the dates on which such assistance was provided.

Respectfully submitted,

ABNER W. SIBAL
General Counsel

ISSIE L. JENKINS
Deputy General Counsel

CONSTANCE L. DUPRE
Associate General Counsel
Legal Counsel Division

/s/ Anthony J. De Marco
ANTHONY J. DE MARCO
Attorney for the Defendant

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
2401 E Street, N.W.
Washington, D.C. 20506

DATED: February 1, 1977

AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA)
) SS
COUNTY OF ALLEGHENY)

Before me, the undersigned authority, personally appeared Eugene V. Nelson, who being duly sworn according to law deposes and says that he is Pittsburgh District Director, Equal Employment Opportunity Commission, Defendant, and that the within answers to Plaintiff's Interrogatories are true and correct to the best of his knowledge, information and belief.

/s/ Eugene V. Nelson
EUGENE V. NELSON

SWORN TO and subscribed before me this 18th day of January, 1977.

[SEAL]

/s/ Richard D. Cercone
RICHARD D. CERCONE
Notary Public

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

Civil Action No. 76-0510-R

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

v.

JOSEPH HORNE COMPANY

ORDER

It appearing that this case was transferred from the United States District Court for the Western District of Pennsylvania on the courts own motion; and

It further appearing that the questions of law and fact are similar to the case styled *Associated Dry Goods* v. *E.E.O.C., et al.*, CA 75-0297-R; and

It further appearing that the United States District Court for the Western District of Pennsylvania transferred this case for the purpose of consolidating it with CA 75-0297-R; and deeming it proper to do so

It is hereby ORDERED that this case be and the same hereby is consolidated with CA 75-0297-R.

Let the Clerk send copies of this order to all counsel of record in CA 76-0510-R and CA 75-0297-R.

/s/ Robert R. Merhige, Jr.
United States District Judge

Date: Mar. 1, 1977

AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA)
) SS:
COUNTY OF ALLEGHENY)

BEFORE ME, the undersigned authority, a Notary Public in and for said Commonwealth and County, personally appeared SAMUEL A. VITARO, who, being duly sworn according to law, deposes and says that:

1. On March 1, 1976 Affiant was authorized by Louis B. Kushner, Esquire, to review the Equal Employment Opportunity files related to charges of sex discrimination filed by Marlene Denk, Mary Kritko, Lois J. Blake and Helen A. Pollock, against Joseph Horne Company. Louis B. Kushner at the time of authorization was the attorney for the above listed charging parties.

2. On March 10, 1976, April 14, 1976, April 27, 1976, and June 17, 1976, the Affiant reviewed the files of Marlene Denk, Mary Kritko, Lois J. Blake and Helen A. Pollock pursuant to the authorization granted by Louis B. Kushner. The review was conducted at the offices of the Equal Employment Opportunity Commission, Pittsburgh District Office, Room 2038, Federal Building, Pittsburgh, Pennsylvania 15222.

3. At the times of the above described reviews, Affiant also reviewed the Equal Employment Opportunity files of his client, Alice M. Corvino, who had filed a charge of sex discrimination against Joseph Horne Company.

/s/ Samuel A. Vitaro
SAMUEL A. VITARO

Subscribed and Sworn to before me this 23d day of March, 1977.

/s/ [Illegible]
Notary Public

UNITED STATES GOVERNMENT

Memorandum

TO : File 034-30774 DATE: June 22, 1976
Corvino v. Joseph Horne Co.

FROM : Eugene V. Nelson—/s/ E.V.N.
District Director

SUBJECT: Continuation of Processing

It is my determination that it is in the public interest that the above charge continue to be investigated, although Notice of Right to Sue was issued this date, pursuant to Commission Regulations, Section 1601.25b(d).

[EMBLEM]

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

Civil Action No. 75-0297-R

ASSOCIATED DRY GOODS CORPORATION, PLAINTIFF

v.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, ET AL., DEFENDANTS

—and—

Civil Action No. 76-0510-R

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, PLAINTIFF

v.

JOSEPH HORNE COMPANY, DEFENDANT

ORDER

For the reasons stated in the memorandum of the Court this day filed, and deeming it proper so to do, it is ADJUDGED and ORDERED that:

1. The EEOC's application filed in Civil Action No. 76-0510-R for enforcement of its administrative subpoena *duces tecum* be, and the same is hereby, granted;
2. Judgment on the merits in Civil Action No. 75-0297-R be, and the same is hereby, entered in favor of the plaintiff Associated Dry Goods Corporation;
3. The EEOC procedural regulations found at 29 C.F.R. §§ 1601.20 and 1610.17(d), and the special disclosure rules found at § 83 of the EEOC Compliance Manual, are hereby declared to be void, invalid and unenforceable to the extent that they authorize the EEOC

to disclose to charging parties any information contained in EEOC investigative files; and that the Commission, its agents, employees and all others acting in its behalf be, and they are hereby, enjoined from making any such disclosures; and

4. The request of Associated Dry Goods Corporation for attorney's fees and other litigation costs incurred in defending against the EEOC's action to enforce the subpoena *duces tecum* be, and the same is hereby, denied.

Let the Clerk send copies of this order and the memorandum to all counsel of record.

/s/ Robert R. Merhige, Jr.
United States District Judge

SUPREME COURT OF THE UNITED STATES

No. 79-1068

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
PETITIONERS

v.

ASSOCIATED DRY GOODS CORPORATION

ORDER ALLOWING CERTIORARI

Filed March 17, 1980

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fourth Circuit is granted.

Mr. Justice Powell took no part in the consideration or decision of this petition.

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